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(27,545)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 790.

THE SUPREME TRIBE OF BEN-HUR, APPELLANT,

vs.

AURELIA J. CAUBLE *ET AL.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 23, 1920.

1 Pleas of the District Court of the United States for the District of Indiana, begun and holden at the United States Court House in the City of Indianapolis, in said District, on the first Tuesday in May, in the year of our Lord one thousand nine hundred and nineteen, before the Honorable Albert B. Anderson, Judge of said District Court.

In Equity.

No. 7.

GEORGE BALME et al., Complainant-,

vs.

THE SUPREME TRIBE OF BEN-HUR, ROYAL H. GERARD, JOHN C. SNYDER, Samuel E. Voris, Jesse F. Davidson, John R. Bonnell, George Hazen, Defendants.

THE SUPREME TRIBE OF BEN-HUR, Complainant,

vs.

AURELIA J. CAUBLE, MARTHA M. BROWN, HELEN B. BURROUGHS, O'Neal Watson, Harry M. Vance, Robert McMains, Eliza H. Watson, Sidney Speed, William C. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams, John H. Rice, Theodore M. Sharp, Robert T. Davis, George Neilist, Margaret C. McMains, John W. Hurley, Henry T. Schenck, Thomas J.
2 Houlehan, Frank S. Van Dyke, George C. Fox, Armina J. Cox, Elizabeth Clemson, Margaret Speed, Thomas J. Harp, Mary E. Osburn, Edwin A. Brower, James Walter Grimes, Vona Dickerson, John C. Wingate, Anna E. Young, Wesley W. Young, James W. Dickerson, Defendants.

Be it remembered that heretofore, to-wit, at the May Term of said Court, on the 26th day of September, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following proceedings in the above entitled cause were had, to-wit:

Comes now the complainant by Miller Dailey and Thompson, its solicitors and files its ancillary bill of complaint herein, in the words and figures following, to wit:

3 In the District Court of the United States for the District of Indiana.

In Equity.

No. 7.

GEORGE BALME et al., Complainant-,

vs.

THE SUPREME TRIBE OF BEN-HUR, ROYAL H. GERARD, JOHN C. SNYDER, Samuel E. Voris, Jesse F. Davidson, John R. Bonnell, George Hasen, Defendants.

Ancillary Bill of Complaint.

THE SUPREME TRIBE OF BEN-HUR, Complainant,

vs.

AURELIA J. CAUBLE, MARTHA M. BROWN, HELEN B. BURROUGHS, O'Neal Watson, Harry M. Vance, Robert McMains, Eliza H. Watson, Sidney Speed, William C. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams, John H. Rice, Theodore M. Sharp, Robert T. Davis, George Neilist, Margaret C. McMains, John W. Hurley, Henry T. Schenck, Thomas J.
4 Houlehan, Frank S. Van Dyke, George C. Fox, Armina J. Cox, Elizabeth Clemson, Margaret Speed, Thomas J. Harp, Mary E. Osburn, Edwin A. Brower, James Walter Grimes, Vona Dickerson, John C. Wingate, Anna E. Young, Wesley W. Young, James W. Dickerson, Defendants.

To the Honorable Judges of the District Court of the United States for the District of Indiana:

The Supreme Tribe of Ben-Hur, one of the Defendants in the above entitled cause, complains of Aurelia J. Cauble, Martha M. Brown, Helen B. Burroughs, O'Neal Watson, Harry M. Vance, Robert McMains, Eliza H. Watson, Sidney Speed, William C. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams, John H. Rice, Theodore M. Sharp, Robert T. Davis, George Neilist, Margaret C. McMains, John W. Hurley, Henry T. Schenck, Thomas J. Houlehan, Frank S. Van Dyke, George C. Fox, Armina J. Cox, Elizabeth Clemson, Thomas J. Harp, Margaret Speed, Mary E. Osburn, Edwin A. Brower, James Walter Grimes, Vona Dickerson, James W. Dickerson, John C. Wingate, Anna E. Young, Wesley W. Young, and shows to the Court:

5 First. That The Supreme Tribe of Ben-Hur is a fraternal beneficiary society, organized and existing under and by virtue of the laws of the State of Indiana; that on the 8th

day of January, 1894, said society was organized under the laws of the State of Indiana, and, thereafter, on the 20th day of February, 1909, it was re-incorporated under and pursuant to the statutes of the State of Indiana, and ever since its original organization has been, and now is, a fraternal beneficiary association, organized for the purpose of conducting, and conducting the business of a fraternal beneficiary society, in said State, and elsewhere, under the laws thereof, and having by virtue of the laws of the State of Indiana, the right to sue and be sued, the right to contract and be contracted with; that said Supreme Tribe of Ben-Hur has its principal office and place of business in the City of Crawfordsville, Montgomery County in said State of Indiana; that the defendants, Aurelia J. Cauble and Edward A. Brower are citizens and residents of Marion County, in the State of Indiana; that defendant, Mary E. Osburn was, at the time of the bringing of said action of Balme, et al. vs. The Supreme Tribe of Ben-Hur, et al., a citizen and resident of the City of Crawfordsville, Montgomery County, Indiana, but at this time her exact residence is to complainant unknown; that the defendants Anna E. Young and Wesley W. Young, are citizens and residents of the city of Huntington, Huntington County, Indiana; that defendants James W. Dickerson & Vona Dickerson are citizens & residents of Wingate, Indiana; and that all the other defendants to this Ancillary Bill, are citizens and residents of Montgomery County, in the State of Indiana.

Second. That on the sixteenth day of April, 1913, George Balme, and more than five hundred other complainants, all of whom were members of Class A of the Supreme Tribe of Ben-Hur (all as
6 hereinafter more particularly averred) filed in the District Court of the United States, for the District of Indiana their Bill of Complaint in the above entitled cause, being cause No. 7, in Equity, in said Court; that the Complainants therein were none of them residents of the State of Indiana, but that they were residents of the States of Ohio, Kentucky, Illinois, California, Oregon, Texas, Arkansas, Alabama, Louisiana, Pennsylvania, Tennessee, and other states of the Union, than the State of Indiana; that the defendants in said cause were all citizens and residents of the State of Indiana, and that the defendants therein, other than The Supreme Tribe of Ben-Hur, were officers of said Supreme Tribe of Ben-Hur, and were made defendants to said Bill of Complaint on account of their official relation and connection with said Supreme Tribe of Ben-Hur, and not otherwise.

Third. That after the filing of said Bill of Complaint, in said cause, the defendants thereto filed an Answer therein; that by and with the consent of both parties thereto, said cause was referred to the Honorable Edward Daniels, Master in Chancery of said Court, to hear the evidence and report his Findings of Facts, and Conclusions of Law thereon; that said reference was made on the 9th day of July, 1913; that thereafter, said Master, upon notice to the respective parties, and their solicitors, did hear the evidence in said cause, offered

by the parties thereto, which evidence was voluminous, and
7 after hearing argument of counsel, did, on the 8th day of January, 1915, file his report as such Master; that thereafter, and within the time fixed by law, both the complainants and the defendants filed their exceptions to said Master's report; that thereafter said cause was heard on the exceptions to said Master's report, by the Honorable Francis E. Baker, duly appointed to hear and determine said cause; that said exceptions were heard and argued before said Honorable Francis E. Baker, Judge of the United States Circuit Court, and additional evidence was introduced before said Judge, and on the first day of July, 1915, a final decree was entered in said cause, sustaining certain exceptions filed to the Master's report, by the defendants in said cause, which exceptions were numbered "six," and "seven," and entering a final decree dismissing the complainants' Bill of Complaint for want of equity, at complainants' cost, and that said judgment and decree reads as follows:

"In the District Court of the United States for the District of Indiana, May Term, 1915, July 1st, 1915.

In Equity.

No. 7.

GEORGE BALME et al.

vs.

THE SUPREME TRIBE OF BEN-HUR et al.

Before the Honorable Francis E. Baker, Circuit Judge.

Decree.

8 "This cause came on to be heard on this first day of July, 1915, and during the progress of the argument on motion of the defendants said cause was reopened for the taking of additional evidence before the court, and the same was this day taken before the court and such evidence is hereby ordered transcribed and filed in the office of the Clerk of this court as a part of the evidence in this cause.

"And the court now overrules exceptions numbered 20 and 21 filed by the complainants to said master's report, and sustained exceptions numbered six and seven filed by defendants to said report. The court has not considered and makes no ruling upon the other exceptions filed by complainants and defendants, for the reason that said other exceptions all go to questions of fact which are not considered by the court to be relevant to the decision of this cause.

"And thereupon, upon consideration thereof, it is ordered, adjudged and decreed by the court as follows, viz: That complainants'

bill of complaint be dismissed for want of equity at complainants' costs. All of which is finally ordered, adjudged and decreed by the court; and complainants now move orally for a rehearing and an apportionment of the costs herein."

That said decree has never been appealed from, reversed, modified or vacated in any way, but the same is in full force and effect.

That the complainant to this ancillary bill of complaint files herewith, as a part hereof, a true and correct copy of the Bill of Complaint, the defendants' answer, the order of reference to the Master in Chancery, the report of the Master in Chancery, the complainants' exceptions before the Master, to the Master's report; defendants' exceptions before the Master to the Master's report; defendants' exceptions to the report of the Master; complainants' exceptions to the report of the Master; decree dismissing the Bill of Complaint, and the entry overruling complainants' motion for a rehearing in said cause, and the apportionment of the costs, all of which is marked "Exhibit A," and, by reference, incorporated into and made part of this Ancillary Bill of Complaint.

Fourth. That said five hundred complainants brought said action of Balme, et al., vs. The Supreme Tribe of Ben-Hur, et al., as a class suit, and for the benefit and advantage of all the members of Class A of The Supreme Tribe of Ben-Hur, and that paragraph three of said Bill of Complaint, so filed in the cause of Balme, et al., vs. The Supreme Tribe of Ben Hur, et al., reads as follows:

"Third. That each and every of your orators is a beneficial member of said corporation in good standing, and holds a beneficial certificate or contract of insurance issued to him or her by said corporation. That the date of the beneficial certificate of each and every of your orators is prior to June 1st, 1908, and that each and every of your said orators belong to class "A" of the members of said corporation. That there are now over seventy thousand members in said class "A"; that it is impracticable to join all of said class "A" members as complainants herein; that this action is instituted for the benefit of each and every class "A" member of said corporation; that the relief prayed for herein will redound to the benefit of each and every member of said class "A"; and that the questions involved herein are of common and general interest to each and every member of said class "A."

That among the findings of the Master in said cause is the following:

"That the number of members of Class A on the third Monday of May, 1908, the date of the convening of the biennial convention in that year was approximately 100,000; the certificates issued to said Class A members were not all literally the same and they were distinguished from each other as Schedule 1, Schedule 2, Schedule 3 and Schedule 4, with reference to date of issuance, the oldest certificates being designated as Schedule 1.

"That at the time the bill of complaint was filed there were more than seventy thousand members in said Class A; that on No-
11 vember 1st, 1913, there were over forty thousand members in Class A; that it is and at all times since the filing of said bill of complaint has been impracticable to join all of said Class A members as parties hereto; that the questions involved herein are of common and general interest to each and every member of said Class A."

Fifth. That in said cause of George Balme et al. vs. The Supreme Tribe of Ben-Hur et al., being cause No. 7, in Equity, in the District Court of the United States, for the District of Indiana, there was at issue, and actually litigated and tried, determined, and finally adjudicated between the parties to said cause, among other things, the following questions and propositions:

1. The right of The Supreme Tribe of Ben-Hur, to create a new class of benefit certificate holders, known as Class B. (The membership in such society up to July 1st, 1908, having been in the class, thereafter to be designated as Class A); the right of said society to determine that all benefit certificates issued after July 1st, 1908, should be Class B certificates, and that no Class A certificates should be issued, after said date, and no new members taken into Class A, from said time, and that all benefit certificates issued after said date should be Class B certificates, and that all new members should become members of Class B, after said date.

12 2. The right of The Supreme Tribe of Ben-Hur to require members of Class B to pay different rates for their insurance, from members of Class A.

3. The right of The Supreme Tribe of Ben-Hur to require that the mortuary funds of said two classes be kept separate and distinct, and that the death losses occurring therein, should be paid out of the funds of each class respectively.

4. The right of The Supreme Tribe of Ben-Hur to authorize members of Class A to transfer, upon a written application, therefor, to Class B, and to take with them into Class B their interest in the mortuary and other funds of the society, created, or arising prior to July 1st, 1908, and requiring said Class B members to pay a monthly payment and rate in excess of that paid by Class A members.

5. The right of The Supreme Tribe of Ben-Hur to require members remaining in Class A, and not transferring to Class B, to pay a sufficient number of monthly payments, or assessments, to meet the death losses in Class A.

6. The right of The Supreme Tribe of Ben-Hur to use the expense fund of said society for the purpose of creating Class B, and inducing Class A members to transfer to Class B, and of securing new members in Class B.

13 7. Whether The Supreme Tribe of Ben-Hur had used the expense fund in a manner justified by its constitution and by-

laws and a general examination of expenditures which had been made by said Supreme Tribe of Ben-Hur, out of its expense fund, and the purpose for which said expenditures had been made, and whether any of said expenditures were made in violation of the rights of Class A members.

8. The right of The Supreme Tribe of Ben-Hur to use its expense fund, including all questions as to whether payments made out of said fund were equitable and just, or inequitable, wrongful and unlawful; and the question of whether the maintenance of a general expense fund, and the payment of the entire expenses of the society therefrom, was fair, just and legal.

9. Whether The Supreme Tribe of Ben-Hur had wrongfully, or unlawfully, inaugurated a campaign to persuade and induce the members of said society belonging to Class A to give up and lapse their certificates in Class A, and to apply for and procure membership and certificates in Class B; or whether the action of said The Supreme Tribe of Ben-Hur, and its officers, in that connection, was rightful, just and equitable.

10. The question of whether the rates in Class A, in effect prior to July 1st, 1908, were adequate, or inadequate, or whether
14 they were sufficient to provide for the current death losses in Class A, and the expenses of the society; or whether it was necessary, in order to prevent the insolvency of The Supreme Tribe of Ben-Hur, to create a new class, and induce the members of the old class, insofar as it was possible to induce them, to transfer to the new class, and the right of the society to take all action necessary for this purpose.

That there was also involved in said litigation, and at issue in said cause, the right of The Supreme Tribe of Ben-Hur, to make such assessments upon the members remaining in Class A, as would provide for death losses in said Class A.

That the averments in this subdivision of this Ancillary Bill, are made upon information and belief.

Sixth. Complainant further avers, upon information and belief, that in said cause of Balme, et al., vs. The Supreme Tribe of Ben-Hur, et al., it was conclusively and finally determined and adjudged that the entire plan of reorganization, adopted at the regular biennial meeting of The Supreme Tribe of Ben-Hur, held in the year 1908, and as amended in the biennial meetings held in 1910 and 1912 was valid and binding, and effective upon all members of said Supreme Tribe of Ben-Hur, including the membership afterwards known as Class A, and including the defendants to this Ancillary Bill of Complaint, who were members of said Class A and including
15 also, the defendants to this Ancillary Bill of Complaint, who are the beneficiaries of certain deceased members of said Class A, who were living, and were members of the society, at the time of the creation of said Class B, all as herein averred.

That it was also conclusively adjudged and determined in said cause, that all action taken by said The Supreme Tribe of Ben Hur,

and its officers, in connection with said plan of reorganization, had been validly and lawfully taken, and that all expenditures made, had been lawfully made, and that The Supreme Tribe of Ben Hur, and its officers had acted in good faith, for the benefit of the entire membership of said society, with full and due publicity to all the benefit certificate members, including the defendants to this Ancillary Bill, and that they had been guilty of no diversion, or unlawful misapplication of any of the funds of said society.

Seventh. That said cause of Balme, et al. vs. The Supreme Tribe of Ben-Hur, et al., was an actual adversary proceeding; that it was instituted and prosecuted in good faith, and with vigor; that the decree in said cause was entered after actual adverse litigation and not by consent or connivance.

16 Eighth. That Peter C. Cauble became a member of The Supreme Tribe of Ben-Hur on the 19th day of February, 1900, and died on the 10th day of February, 1918; that the defendant to this Ancillary Bill of Complaint, Aurelia J. Cauble, is the widow of said decedent, Peter C. Cauble, and was named in his benefit certificate as his beneficiary; that the said Peter C. Cauble was a member of said Supreme Tribe of Ben-Hur at the time of the legislation hereinbefore referred to, at the time the cause of Balme, et al. vs. The Supreme Tribe of Ben-Hur, et al., was instituted, and during the entire time it was pending, and when it was finally determined and the decree entered therein; that Peter C. Cauble as a member of said Tribe of Ben-Hur, and of Class A thereof was conclusively bound and determined by the decree in said class suit; that on the 8th day of February, 1919, the said Aurelia J. Cauble commenced in the Marion Superior Court, of Marion County, Indiana, a cause of action entitled, Aurelia J. Cauble vs. The Supreme Tribe of Ben-Hur, which is cause No. A-4754, on the docket of said Court, which cause is still pending, in which she seeks to recover on a benefit certificate issued to said Peter C. Cauble by said Supreme Tribe of Ben-Hur, although it expressly appears in said complaint that Peter C. Cauble refused to pay extra assessments levied against him as a member of
17 Class A of said Supreme Tribe of Ben-Hur and in which complaint she seeks to re-litigate the questions finally and conclusively determined and adjudicated in said cause of Balme, et al., vs. The Supreme Tribe of Ben-Hur et al., and in which she seeks to question the right of said Supreme Tribe of Ben-Hur to induce members of Class A to transfer to Class B; and in which she charges that said Supreme Tribe of Ben-Hur, and its officers wholly failed, neglected and refused to solicit new membership for Class A, and in which she alleges that the funds transferred from Class A to Class B were trust funds, and that said society had no right to permit the transfer of said funds from Class A to Class B; and in which she alleges that the laws of the society authorizing such transfer were nul- and void, and of no effect; and in which she also further alleges that the mortuary funds of said Class A members were transferred to Class B, and in which, in a general way, she challenges the validity of the plan of re-organization of said Supreme Tribe of Ben-Hur, and

the creation of Class B, and seeks to recover on said benefit certificate, on the theory that said plan of reorganization was unlawful and in violation of her rights, and the rights of Peter C. Cauble, notwithstanding the fact that the said Peter C. Cauble failed to pay assessments levied against him by said Supreme Tribe of Ben-Hur.

18 That said cause of action brought by Aurelia J. Cauble is an effort and attempt on her part, to relitigate, and to have determined in her favor, issues conclusively adjudged and decided against Peter C. Cauble in his lifetime, and is a collateral attack upon the decree of this Court in said case of Balme, et al., v. The Supreme Tribe of Ben-Hur.

That each and all of the questions which said Aurelia J. Cauble seeks to litigate in said cause, in the Superior Court of Marion County, Indiana, were actually litigated and determined in said cause of Balme, et al., vs. The Supreme Tribe of Ben-Hur, et al., and adversely to the contention of the said Aurelia J. Cauble, and that she has no right to seek to have a re-determination of said causes, and that to permit her to do so is to destroy and nullify the decree entered and rendered by this Court in said Balme case; that the complainant in this Ancillary Bill, files herewith, as a part of this Ancillary Bill, a copy of the complaint in said cause of Aurelia J. Cauble, vs. The Supreme Tribe of Ben-Hur, marked "Exhibit B," and by reference, makes the same a part of this Ancillary Bill.

Ninth. That one Horace G. Brown became a member of The Supreme Tribe of Ben-Hur on the 20th day of December, 1895, on which date a benefit certificate was issued to him in said

19 society, for the sum of twenty-one hundred dollars; that said Horace G. Brown died on the — day of ——: that prior to his death he had designated as his beneficiaries in said certificate his daughters, Martha May Brown, and Helen B. Burroughs, defendants to this Ancillary Bill of Complaint; that said Horace G. Brown, was, at the date of the commencement of said suit, of Balme vs. The Supreme Tribe of Ben-Hur, a member of Class A, of said society, and was such member during the entire continuance of such suit and at the time the decree therein was entered and rendered; that on the — day of ——, the defendants to this Ancillary Bill of Complaint, Martha May Brown, and Helen B. Burroughs, commenced an action in the Circuit Court of Montgomery County, Indiana, against The Supreme Tribe of Ben-Hur to recover on a benefit certificate issued by said society to said Horace G. Brown, deceased, in which they seek to re-litigate the questions conclusively adjudged and determined against the said Horace G. Brown, as a member of Class A of The Supreme Tribe of Ben-Hur in said cause of Balme, et al., vs. The Supreme Tribe of Ben-Hur in which they challenge the right of the defendant society to create Class B and the plan of reorganization, and the action of the defendant society, and its officers, pursuant to such legislation, all of which questions were con-

20 clusively adjudged and determined in said cause of Balme, et al., vs. The Supreme Tribe of Ben-hur, et al.; that the questions of law and of fact involved in said cause in the Montgomery Circuit Court, are the same identical questions and none other, which

were conclusively adjudged and determined against the plaintiffs therein, defendants to this Ancillary Bill of Complaint, in said Balme, et al., vs. The Supreme Tribe of Ben-Hur, et al.; that the complainant in this Ancillary Bill of Complaint, files herewith, and as a part hereof, marked "Exhibit C" a copy of the complaint in the cause of Martha May Brown and Helen B. Burroughs vs. The Supreme Tribe of Ben-Hur, in the Montgomery Circuit Court, which is hereby, by reference, made a part of this Ancillary Bill and incorporated therein; that it is averred, among other things, in said complaint filed in the Montgomery Circuit Court, in the suit of Martha May Brown, and Helen B. Burroughs vs. The Supreme Tribe of Ben-Hur, that The Supreme Tribe of Ben-Hur, and its officers have conspired and planned to render certificates in Class A worthless; that said Supreme Tribe of Ben-Hur, and its officers, have wrongfully and unlawfully diminished and squandered the expense fund of said society; that they started another class of insurance in said Society,
and procured all future policies to be taken out in the class,
21 and that it wrongfully and unlawfully solicited and procured
policy holders in the old class to withdraw from said class, and to stop paying money into the beneficiary and expense funds of the old class, and caused them to take policies in the new class; that the new class was started at a large expense, and that the result of such action was a wrong against the members of the old class, including Horace G. Brown.

Tenth. That the following named defendants to this Ancillary Bill of Complaint, towit: O'Neal Watson, Harry M. Vance, Robert McMains, Eliza H. Watson, Sidney Speed, William C. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams, John H. Rice, Théodore M. Sharp, Robert T. Davis, George Neilist, Maegaret C. McMains, John W. Hurley, Henry T. Schenck, Thomas J. Houlehan, Frank S. Van Dyke, George C. Fox, Armina J. Cox, Elizabeth Clemson, Thomas J. Harp, Margaret
Speed, Mary E. Osburn, Edwin A. Brower, James Walter
22 Grimes, James W. Dickerson, Vona Dickerson, James W.
Dickerson, John C. Wingate, Anna E. Young, Wesley W. Young, were all members of the defendant society prior to said first day of July, 1908, and were all members in Class A of said defendant society, at the time the Bill of Complaint in said cause of Balme, et al., vs. The Supreme Tribe of Ben-Hur, et al., was filed, and at the time said cause was tried, and when the final decree therein was entered and rendered, and were bound by all the terms of said decree; that said last named defendants, on the 24th day of May, 1918, commenced an action in the Montgomery Circuit Court, of Montgomery County, in the State of Indiana, which cause of action is still pending, wherein they seek to relitigate the questions tried, determined and conclusively adjudged against them in said cause of Balme, et al., v. The Supreme Tribe of Ben-Hur, et al.; that in and by the complaint filed by said defendant it is, among other things averred that said Supreme Tribe of Ben-Hur, and its officers, unlawfully and wrongfully used the expense fund of said society in the creation of a new class, towit, Class B, and the procuring of the transfer to said

Class B, of members of Class A; that said Supreme Tribe of Ben Hur and its officers, unlawfully, and wrongfully conspired to start another class of insurance in said society, and to procure all future
23 policies to be taken in said new class, towit, in Class B; and to stop payments being made into the expense and mortuary fund of said Class A, of all members transferring from said Class A to Class B; and they further allege in said complaint, that the creation of said Class B was attended with great expense, and that in pursuance of said plans, The Supreme Tribe of Ben-Hur, and its officers, caused money to be taken out of the beneficiary fund, and expense fund, for the purpose of creating said new class; and it is further alleged in said complaint, that by increasing the number of assessments against the members in Class A, the defendant society acted wrongfully and unlawfully, and in violation of the rights of said Class A members; and it is further alleged that said members of said Class A were only required to pay a certain limited number of assessments, and not such number of assessments as might be levied against them by said society, as might be necessary to pay the mortuary claims of said Class A; that said Supreme Tribe of Ben-Hur, and its officers, wrongfully and unlawfully refused to maintain Class A as a going concern, and to take new members into said Class A; that the plaintiffs in said last mentioned cause in the Montgomery Circuit Court, are seeking, in a general way to attack the plan of reorganization adopted by said Supreme Tribe of Ben-Hur, and the action taken by its officers in pursuance of said plan,
24 all of which has been conclusively adjudged and determined in said cause of Balme, et al., vs. The Supreme Tribe of Ben-Hur, et al., to be valid and lawful; that said plaintiffs, in said cause, in the Montgomery Circuit Court are seeking to set at naught, the decree rendered by this Court in said cause, and to re-open, re-hear and re-determine all of said questions of law and fact, and that all the matters and facts set forth in said complaint filed in the Montgomery Circuit Court, were fully and finally adjudged and determined against said plaintiffs therein, defendants to this Ancillary Bill, in said cause of Balme, et al., vs. The Supreme Tribe of Ben Hur, in this Court; that a copy of said complaint in said cause, filed in the Montgomery Circuit Court, is made a part of this Ancillary Bill, marked "Exhibit D." and by reference incorporated in this Ancillary Bill.

Eleventh. The complainant in this Ancillary Bill of Complaint is informed and believes, and upon such information and belief alleges the facts to be that unless the several defendants to this Ancillary Bill of Complaint, are enjoined and restrained by this Court, they will prosecute said several causes in the Superior Court of Marion County, Indiana, and in the Montgomery Circuit Court, in
25 Montgomery County, in the State of Indiana; that The Supreme Tribe of Ben-Hur will be compelled to employ attorneys to defend it in said several causes; that it will be compelled to re-litigate the questions which have been conclusively adjudged and determined by this Court, in this

cause, all to its irreparable loss and injury, and in this manner the several defendants to this Ancillary Bill of Complaint, are seeking to annul, set aside and hold for naught the decree of this Court and to compel said Supreme Tribe of Ben-Hur, at great expense, to litigate, again, all of said questions, which have been determined, decided and adjudged in favor of said Supreme Tribe of Ben-Hur; that there are a number of former members of said Class A of The Supreme Tribe of Ben-Hur, residing within the State of Indiana and in other states of the Union, who have refused to pay the additional number of assessments levied against them in said Class A in said Supreme Tribe of Ben-Hur, pursuant to such plan of reorganization, for the purpose of meeting the mortuary claims of members in Class A, who have died since the creation of said Class B; that complainant is informed and believes, and upon such information and belief avers the fact to be, that unless the defendants to this Ancillary Bill of Complaint are enjoined and restrained from prosecuting said several cases, said other members are likely to institute and attempt to prosecute cases, seeking to
26 recover on the benefit certificates issued to them, and by reason thereof, The Supreme Tribe of Ben-Hur will be compelled to defend a large number of cases, at great expense, and will be annoyed and harassed by litigation in Indiana and other states, with respect to questions already conclusively adjudged and determined in its favor, in said cause of Balme, et al., vs. The Supreme Tribe of Ben-Hur, et al.

Twelfth. Complainant in this Ancillary Bill avers that unless an interlocutory injunction is granted after notice to the defendants to this Ancillary Bill, and upon hearing, complainant will be compelled to defend numerous suits, including those suits already commenced, already as herein alleged, to its irreparable loss and injury, and for which the complainant in this Ancillary Bill has no adequate, or complete remedy at law.

Inasmuch as, therefore, the complainant is without adequate remedy in the premises, by the strict rule of common law, and can obtain relief only in a court of equity, where matters and things of the kind and character herein alleged, are properly cognizable, and relieveable, and to the end that complainant may have the relief that it can obtain only in a court of equity, complainant prays, as follows, towit:

1. That writs of subpœna be issued to said defendants, and
27 each of them, requiring them, and each of them to answer this Bill of Complaint, fully and truthfully, but not under oath, an answer under oath being hereby expressly waived, as to each and all of said defendants.

2. That the defendants, and each of them, their agents and attorneys be restrained and enjoined until the final hearing of this cause, from the further prosecution of said causes in the Superior Court of Marion County, Indiana, and in the Montgomery Circuit

Court, of Montgomery County, Indiana, and from instituting, or prosecuting in any Court, any cause of action, on any benefit certificates held by them, or in which they are named as beneficiaries, or to recover damages on account thereof, and from attempting to relitigate the questions adjudged and determined against them in the cause of Balme, et al., vs. The Supreme Tribe of Ben-Hur, et al.

3. That upon the final hearing of this cause, the said injunction be made permanent; and for such further and other relief in the premises, as may be required by equity and good conscience.

THE SUPREME TRIBE OF BEN-HUR
By CRANE & McCABE,
MILLER, DAILEY & THOMPSON,
Its Solicitors.

BENJ. CRANE,
W. H. THOMPSON,
Of Counsel.

28 & 29 STATE OF INDIANA,
County of Marion, ss:

John C. Snyder, being first duly sworn, upon his oath says that he is the Supreme Scribe of The Supreme Tribe of Ben-Hur, sustaining the relation of secretary of said The Supreme Tribe of Ben-Hur, complainant herein; that he has read over the foregoing Ancillary Bill of Complaint, and knows the contents thereof; that the allegations therein contained are true, except as to matters therein stated to be on information and belief, and that as to such matters he believes them to be true that he makes this affidavit for and on behalf of The Supreme Tribe of Ben-Hur, and has the power and authority so to do.

JOHN C. SNYDER.

Subscribed and sworn to before me, this 25 day of September, 1919.
ALBERT L. RABB,
Notary Public.

My commission expires 7 Sept., 1922.

30 In the District Court of the United States for the District of Indiana.

No. 7. In Equity.

GEORGE BALME et al., Complainants,

vs.

THE SUPREME TRIBE OF BEN-HUR, ROYAL H. GERARD, JOHN C. SNYDER, S. E. VORIS, J. F. DAVIDSON, EDWARD R. BRYSON, J. R. BONNELL, and G. H. HAZEN, Defendants.

In Recess.

30/1–2 In the District Court of the United States for the District of Indiana.

No. 7. In Equity.

GEORGE BALME et al., Complainants,

vs.

THE SUPREME TRIBE OF BEN-HUR, ROYAL H. GERARD, JOHN C. SNYDER, S. E. VORIS, J. F. DAVIDSON, EDWARD R. BRYSON, J. R. BONNELL, and G. H. HAZEN, Defendants.

In Recess.

30/3 In the District Court of the United States for the District of Indiana, November Term, 1912. April 16th, 1913.

In Recess.

No. 7. In Equity.

GEORGE BALME et al.,

vs.

THE SUPREME TRIBE OF BEN-HUR, ROYAL H. GERARD, JOHN C. SNYDER, S. E. VORIS, J. F. DAVIDSON, EDWARD R. BRYSON, J. R. BONNELL, and G. H. HAZEN.

Come now the complainants by L. G. Crawford, Jr., their Solicitor, and file their Bill of Complaint in the above entitled cause, in the words and figures following, to-wit:

To the Honorable Judge of the District Court of the United States for the District of Indiana:

George Balme, Arthur F. Ross, Fred Bary, L. H. Scharstein, H. C. Thompson, Wm. A. Youtsey, D. J. Winston, W. H. Horner, L. B. Atkins, M. M. Ware, D. Miller, F. Miller, W. A. Schriver, F. H. Heitmeyer, Chas. McGovern, J. C. Merz, C. H. Krause, C. S. Thompson, Fred Albershart, Jona Schmidt, A. F. Zitt, Grant Johnson, John Mohler, G. E. Morlidge, James M. Knight, E. F. E. Davis, H. H. Kaigh, H. C. Kordel, J. J. White, Jos. Voddr, M. Cottingham, A. J. Thorman, F. Binder, W. W. White, J. P. Lindsey, Clara E. Albershart, Jacob Weber, Jacob Aschenbach, F. Waldemeyer, A. W. Wiebe, Wm. Kraus, Jr., J. C. Bucher, Walter Bennet,
30/4 J. D. Jones, C. A. Smith, H. N. Smith, R. Matzner, C. E. Bucher, C. W. Parker, M. A. Harris, A. M. Greule, W. F. McClure, F. Jones, J. W. Davis, F. Listerman, M. L. Applegate, Dasie Lindsey, S. L. H. Wiebe, M. E. Murry, A. L. Schnake, Wm. Saner, F. J. Maddox, H. B. Myers, T. E. King, G. Wittman, C. W. Berger, M. O. Marsh, H. A. Speckman, J. G. Jones, R. A. Martin, E. L. Heyne, M. A. Simms, H. R. Irvin, M. A. Horner, J. H. Davis, J. H. White, C. Blessing, F. Blessing, Alma Speckman, Barton A. Schiffer, W. H. Weber, Maggie Knox, J. D. Prather, W. H. Stembel, J. N. Sensel, John Miller, Louisia E. Miller, A. H. Payne, H. W. Root, C. E. Thompson, R. A. Stembel, L. G. Kraus, Jacob Goetz, Alfred Craddock, F. H. Bruggeman, Clara C. Grau, J. B. Hunter, L. B. Banks, Anna S. Swieher, Adam Grimm, John Stahl, J. F. Kreimer, G. Fries, Jr., Viola Griesch, R. Arnold, John Zweckbroner, I. B. Bechtold, W. H. Kennedy, T. J. Perry, F. W. Manter, Ed. Lohstroh, F. Crensere, W. S. Thompson, W. H. Weber, H. S. Thompson, Elizabeth Huber, Annie May Huber, F. C. Bahr, G. G. Waite, M. M. Waite, E. L. Bissell, Bernard H. Moss, R. J. Donovan, E. H. Winters, S. E. Owens, F. H. Herlman, Eva Perry, Adam Zeigler, A. E. Swischer, Bertha Schneider, J. M. Digby, Teho. Relay, R. A. Miller, Hugo Traub, C. H. Kelley, Chas. Ehler, Josephine Wittman, Frank Gilb, W. A. Walker, W. J. Walsh, O. M. Rummel, A. M. Rummel, Rosa Craddock, Wm. F. Miller, D. N. McCarley, Peter Taha, Jas. H. Hurd, M. L. Zitt, W. E. James, Wm. Johnson, W. F. Schaber, Chas. D. Grau, B. R. Marshall, J. L. McGee, W. F. Muir, T. Wahlen, Bessie Wiebe, John Faha, Anna Banderman, John Schweitzer, L. W. Hughes, C. M. Williams, Oscar Hughes, Nellei Walsh, S. Huger, Jr., Elizabeth Williams, Anna C. Bucher, C. W. Edwards, Julia Weber, Rosien Beihl, Lambert Rigler, Wm. F. Stevens, Amanda B. Ross, J. W. Mealy, Peter Wingerter, J. H. Torrey, Mary A. Geiss, Geo. J. Wingerter, O. B. Huber, John Regnath, Christina Schiebly, P. H. Oldenburg, A. W. Buchtman, Mathew Marsh, Elizabeth Marsh, Theresa Stevens, Charles Miller, Louisa P. Mageer, Fred Ostermann, Paul Breeden, Ellen Bradley, Anna Dziech, Wm. Cottingham, Kate Cottingham, Mary Lenahan, George Cole, Chas. B. Allen, Nellie Allserts, Mary E. Axer, Harriett Balme, A. H. Bryant, John Baker, Richard Burke, Hazel Burke, H. J. Bailer, Rob-
30/5 ert Black, Katie Black, George Brink, O. J. Carpeneter, W. E. Carbery, Wm. Cristophel, Martha Christophel, May Clark,

Walter Cleary, Lou R. Clements, Thos. Coleman, Norman Conley, Eliza Cook, John Corless, Thos. Cody, John J. Craig, Geo. Davison, Alex. Davazac, Laura Davis, John Delaney, Fred Degginer, Edgar De Coursey, Anna De Coursey, W. L. Dixon, J. M. Desque, Lawrence Dillon, H. N. Dine, M. M. Donoghue, Bannie Dugan, Mollie Dunne, Martin Duke, Louise Egler, Rose Egler, Wm. Ernst, Elizabeth Ernst, Frank Falke, Mary Falke, John Finan, Wm. Finan, John Gellegher, Margaret Galleger, Anna Gaynor, W. H. Gormley, Ada Gormley, Jas. A. Graham, Robt. Green, A. C. Heckman, W. E. Heckman, J. J. Hennessy, Alice Herr, C. C. Hill, J. S. Holmes, J. J. Hurley, H. Hutcheson, Fred. Herzog, L. D. Jackson, George Jitter, R. W. Jones, Hugo Jonas, Henry Kampe, Mary Ketner, Flora Ketner, Edward Kitner, Stacia Kelly, Geo. Kock, Robert Kraut, Otillie Kraut, W. J. Kleis, F. Kochersparger, Wm. Kochler, Jos. Lalanade, Mary Lolonade, R. F. Langhauser, Harris Levi, Katie Leuclee, L. G. Long, John Lyons, Edward Lowe, John Mann, W. J. Mahon, T. J. Morgan, E. N. Miller, Anna Miller, J. Muggeridge, J. Murphy, Gus Menninger, Henry Mahan, Margaret McGilaway, Wm. McIntosh, J. J. McNavin, W. L. Regan, Geo. Nie, Anna Noel, M. J. Percival, Harry Phillips, Harry Pruden, W. J. Pruden, Cynthia Patterson, Annie Ratchford, Maie Reed, Ben. F. Redd, Owen Rees, Jas. H. Redmond, P. M. Rennbaith, Addie Rennbaith, Chas. C. Respess, A. P. Rose, Margaret Rogers, J. C. Rogers, Maude Raywood, Lottie Rich, Stanley Sawyer, W. M. Semple, Eliz. Schilds, B. Scheeinefuss, Henry Schroder, E. N. Simpson, B. B. Snodgrass, Geo. Speaker, Ida Speaker, Jas. Stanfield, Mary Steventon, Anna Stineman, Geo. Streibich, Victoria Steibich, J. J. Sullivan, Rogers Sullivan, Endora Sheehan, Jas. Turnbull, B. Tepe, Anna Tattershall, L. P. Vander Voort, Minnie Vander Voort, Fred. Wahle, L. L. Wilkie, Stella Wilson, A. C. Ward, E. N. Woods, Harriett Woods, C. B. Wolf, Chas. Willett, Mable Wirth, and John C. R. Yates, citizens of the State of Kentucky, Fred Mack, W. A. Clark, Ada Clark, Mary Coleman, Martin Duke, L. H. Edwards, E. W. Fleming, A. H. Indenieden, B. Y. Jacobs, Daisy Jones, Dan. Kavanaugh, Edward Merz, John Mandee, Ida McCue, Amelia Rust, Hatie Segar, Martha Senour, H. Widrig, F. A. Zweefel, Charles Ambrose, Sophia Ambrose, George Ambrose, Minnie Ambrose, Marg. Allendrof,
30/6 Marg. Arbogast, Wm. Bernhard, Anna Bernhard, Gus. Bernhard, Ed. Brackmeier, Christine Brackmeier, Henry Barkham, L. F. Bohmenkamp, H. H. Barkmann, Henry Bax, Marg. Bradford, J. W. Barr, Chas. Brinkmeyer, Dr. A. D. Birchard, Ed. H. Baumann, Kate Curren, Chas. Drier, Henry Eicher, Albert Ewald, H. F. W. Evers, Ed. Grueninger, Henry Hugo, Patrick Hatfield, Louis Hofer, Geo. Hartman, Mary Hartman, Emil Harten, Geo. Hamman, Paul Held, Carl Hespeler, B. W. Jacobus, Henry Jasper, Adam Keith, Mary Keith, Emma Koze, Louisa Keckritz, John Kaising, Sebastine Kohule, Barbara Kohule, Wm. Loesch, Sallie Loesch, Fred Lorne, Wm. Lovejoy, John Leonhardt, Ernest Leonhardt, Fred Leonhardt, Geo. Lane, Eugene Miles, Lillie Miles, Eunice Mortimer, Goldie Mortimer, Fredereck Mueller, Elise Muller, Thos. Maddock, John Miller, Fred. Meyer, George Moning, Wm.

Meifert, Frank Niehaus, Jennie Niehaus, Gabriel Musz, Katherine Musz, E. S. Peaslee, James Poole, Henry Peters, Wm. C. Root, Mary Root, Florence Root, May C. Root, Phil Bodler, Herman Rabe, Adam Steinkoenig, Mary Steinkoenig, Sam. Saslavsky, Barbara Suffa, Joe Schmitt, John Schulte, F. W. Tepker, Lizzie Tepker, Wm. Tueting, Dr. J. W. Thiel, Henry Vonderahe, Christ Vonderahe, Wm. Williams, John Weber, August Weber, Frank Wright, Carrie Wilson, Peter Wagner, Anna Wagner, Fred. Zoller, Sr., Fred. Zoller, Jr., Joe Zoller, Gertrude Zoller, Florence Zoller, Christ Werner, John Koehler, Chas. Roll, Bertha Roll, Owen Smith, G. W. Hunt, Geo. Pluckelsaum, Jas. Collet, Laura Atkinson, John Carraher, Lizzie Carraher, Jeremiah Wade, Katherine Wade, Cæsar Wrede, Nellie Wrede, Margarette Wrede, Wallace Edwards, Mary Edwards, John Edwards, George R. Myers, Laura H. Myers, William G. Mittendorf, Charles B. Mittendorf, Emma B. Mittendorf, Albert C. Mittendorf, Mrs. Kate Bennett, Charles Pluckelsaum, Dorothy Pluckelsaum, James R. Michean, Charles Michean, Amelia Michean, R. M. Hillsinger, Charles Steffens, Lida Kraemer, J. W. Kraemer, J. M. Birsinger, Warren E. Sanders, Mrs. E. A. Sanders, M. A. Brawley, Edith A. Brawley, Jos. M. Williams, Louis Oberheiman, Louise Oberheiman, Winne Meehan, Martin Davit, William Davit, Albert Dietrich, Delia Dietrich, Sutton B. Dodds, Wm. Sawer, Walter J. Lindsey, George Collier, Mary C. Black, Charles Fischer, Ella Hughes, Blanch Hilton, Emma Kleespier, Jessie Giffin, Lena
30/7 Lazibrincj, Elizabeth Liddell, Wm. Liddell, J. C. Myers, Barley Myers, Alice Mayers, Jennie Myers, Eva Myers, Dr. E. R. McGrath, Louise Taylor, John Wollner, Charles Luhrman, Kate Barnes, Sidney Banard, Henry Luhrman, John Binley, John Kinstler, Irene Scharstien, Mary Kinstler, H. W. Bissell, J. B. Klosterman, G. D. Thorne, F. E. Fries, J. W. Cook, John Burke, C. A. Lieder, A. Kaffenberger, H. Flammer, F. Kinney, Mary Bissell, Clara M. Leider, H. A. Thomas, Theo. H. Hoelscher, Dolly M. Hoelscher, W. A. Adams, August Panhorst, Geo. W. Divinie, Sophia Divinie, J. Adams, H. Nobbe, P. Doene, J. Mutz, J. Holzwoeth, L. Kaiser, F. Betthauer, H. Houndt, J. Dellitol, C. Mack, H. Leg, G. Ritter, C. Hemmered, D. Poggendick, R. Wittenberg, R. Weissman, A. Kaltwasser, H. Kaltwasser, A. Bines, J. Lang, D. Plum, E. Gau, F. Klaus, Wm. Schreiber, F. Finke, G. Hemmerding, Wm. Pape, F. Knapp, B. Hilz, B. Schlagheck, A. Browohouuet, M. M. Aulery, C. Bowshouuet, J. Heinrich, C. Boegli, J. Aeschback, J. Leg, H. Mack, J. Ungerbuehler, C. Schmitt, C. Hamberger, A. Hamberger, G. Roth, F. Koch, H. Dinkel, W. Feej, J. Ryoler, A. Simsmeister, Wm. Hendt, A. Lang, A. Sohmer, F. Sohmer, Louis Heis, Lena Kindel, Jacob Windle, Geo. Noeth, Sr., Geo. Noeth, Jr., Jno. Heilker, Mary Heilker, Jno. Kellerman, Peter Nuss, Jos. Smith, Jos. Bonkamp, Wm. Seilkop, Fred Immenhart, Mrs. Fred Immenhart, Francis Kellerman, Isaac Masters, Wm. Schenck, J. Flick, Wm. Osterbrink, Val Fath, Ben J. Finke, A. A. Mackzum, M. Estinger, Stella Straub, Ricca Straub, Minnie Lawyer, Louisa Breitholle, Mary Lohamd, and Arthur Daley, citizens of the State of Ohio, Charles Whitney and

Geo. Ingersoll, citizens of the State of Tennessee, Chas. F. Fox, W. A. Haigh and Ernst Roesch, citizens of the State of Illinois, Chas. Brandstettner, C. M. Haigh, R. W. Rees, E. M. Magill, Ella T. Bails, and Homer Magill, citizens of the State of California, Minnie Carter, citizen of the State of Vermont, Martha Castello and R. F. Johnson, citizens of the State of Oregon, F. W. Diessen, a citizen of the State of Arkansas, Jere. Lelaney, a citizen of the State of Texas, Carrie Schoedinger, a citizen of Alabama, Mary Warrington, Mrs. Kate Oberle, and C. J. Oberle, citizens of the State of Louisiana, G. W. Perryman, a citizen of the State of Virginia, E. C. F. Ernst, a citizen of the State of Pennsylvania, Patrick Donovan, a citizen of the State of Michigan, J. S. Geisler, a citizen of the State of
30/8 Missouri, bring this their bill of complaint against The Supreme Tribe of Ben-Hur, Royal H. Gerard, John C. Snyder, S. E. Vories, J. F. Davidson, Edward R. Bryson, J. R. Bonnell, and G. H. Hazen, citizens of the State of Indiana, and thereupon your orators complain and say:

First. That the Supreme Tribe of Ben-Hur is, and at all times mentioned herein was, a corporation organized and existing under the laws of the State of Indiana, and having its principal place of business within the said State of Indiana, and that it is, and at all times mentioned herein was, a citizen and resident of the State of Indiana. That by virtue of the laws of the said State of Indiana, said corporation is authorized to sue and be sued; to contract and be contracted with; to conduct the business of a Fraternal Beneficial Insurance Society by and in its corporate name, The Supreme Tribe of Ben-Hur, as will more fully appear by reference to the Articles of Re-incorporation of said corporation which are filed herewith and made a part hereof as fully as if set out here in detail; and to Adopt Laws, Rules and Regulations to govern such business. That such Laws, Rules and Regulations, as they exist or existed at the time a contract of insurance or beneficial certificate is or was issued by said corporation, or as they may be or have been thereafter amended, are and were, by the terms of each and every such contract of insurance or beneficial certificate issued by said corporation, made a part of such contract or certificate. A copy of said Laws, Rules and Regulations, as they now exist and are in force, is filed herewith and made part hereof as fully as if set out here in detail.

Second. That the affairs of said corporation are managed by an Executive Committee provided for by said Articles of Re-incorporation, which Executive Committee now consists of Royal H. Gerard, who is also the Supreme Chief or President of said corporation; John F. Snyder, who is also the Supreme Scribe or Secretary of said corporation; S. E. Voris, who is also the Supreme Keeper of Tribute or Treasurer of said corporation; J. F. Davidson, who is also the Supreme Medical Examiner of said corporation; Edward R. Bryson; G. H. Hazen; and J. R. Bonnell. That all said members of
30/9 said Executive Committee are made individual defendants hereto and that each and every of them is a citizen and resident of the State of Indiana.

Third. That each and every of your orators is a beneficial member of said corporation in good standing, and holds a beneficial certificate or contract of insurance issued to him or her by said corporation. That the date of the beneficial certificate of each and every of your orators is prior to June 1st, 1908, and that each and every of your said orators belong to class "A" of the members of said corporation. That there are now over seventy thousand members in said class "A"; that it is impracticable to join all of said class "A" members as complainants herein; that this action is instituted for the benefit of each and every class "A" member of said corporation; that the relief prayed for herein will rebound to the benefit of each and every member of said class "A"; and that the questions involved herein are of common and general interest to each and every member of said class "A."

Fourth. That the matter in controversy herein exceeds, exclusive of interest and costs, the sum of three thousand dollars.

Fifth. That it is provided by said Articles of Re-incorporation that said corporation shall have power to collect periodical payments from each member of such corporation for the purpose of providing a fund or funds to meet the death losses of said corporation. That it is further provided by said Articles of Re-incorporation that the expenses of said corporation shall be met by and from a per capita tax levied upon each member of said corporation, and by special assessments. And your orators aver that from the 20th day of February, 1900, until the present day, said corporation, by and through its Executive Committee, has wrongfully, unlawfully, and contrary to the express provisions of its charter, appropriated and used five per cent of all of the aforesaid periodical payments of the members of class "A", for the general expenses of said corporation. That a great sum of money, the exact amount of which is to your orators unknown, has, by said action of said corporation, by and through its Executive Committee, been wrongfully, unlawfully and in direct violation of the Charter of said corporation, taken from the mortuary funds of said class "A" and paid out and expended for and on account of the general expenses of the corporation. That said corporation and said Executive Committee intend, propose and threaten to continue in the future to use for expenses as aforesaid five per cent of said periodical payments of the members of class "A", and will do so unless prevented and restrained by this honorable Court.

30/10

Sixth. That by action of the convention of said corporation, held in the year 1908, a new class of beneficial members and beneficial certificates was created, called class "B"; that all former beneficial members were designated as class "A" members. That, by action of said convention, it was determined that all beneficial certificates issued after June 1st, 1908, should be class "B" certificates, and that no class "A" certificate should be issued after said date and no new members taken into class "A" after said date; that all beneficial certificates issued since said date have been class "B" certificates; that no class "A" certificates have been issued and no class "A"

members taken into the corporation since said date. That class "B" members pay a different rate for their insurance than that paid by class "A" members; that, by the laws of said corporation the mortuary funds of said two classes are required to be, have been and are kept separate and distinct; that equity and good conscience requires that all funds, receipts and expenditures of said two classes should be kept separate and distinct; that from June 1st, 1908, until the present day all money apportioned and appropriated for expenses from the payments of members of both of said classes has, by action of said corporation, by and through its Executive Committee, been placed in a common fund, and the expenses of both of said two classes have been paid from that fund, without regard to the proportion of said expenses that should be and have been borne and paid by each of said two classes. That said action is and was unfair, inequitable, wrongful and unlawful, and that it results and has resulted in the payment, by the members of class "A", of a much greater proportion of the general expenses of said corporation than they should, in equity and fair dealing, be required to pay;
30/11 that such action results and has resulted in the members of class "A" paying thousands of dollars monthly of the expense of class "B"; that since June 1st, 1908, a great sum of money, the exact amount of which is to your orators unknown, has by such action, been taken and appropriated from the funds of class "A" and expended for the benefit of class "B"; that said corporation, and said Executive Committee, propose, intend and threaten to continue to place all money apportioned and appropriated for expenses from the payments of both of said two classes in a common fund, and to pay all expenses of the corporation from such fund, as aforesaid, and will do so and continue to do so, unless prevented and restrained by this honorable Court.

Seventh. That there has been accumulated, from the periodical payments of members of class "A", in the eighteen years since the founding of said corporation, a fund now amounting to over one million, two hundred thousand dollars; that said fund has been contributed to by every person who has ever been a member of said class "A", whether said person has now died, been suspended from membership in said corporation, or is now a member in good standing; that ten per cent of the aforesaid periodical payments of the members of said class "A", has been set aside and placed in said fund, and that said fund has received no contribution or accretion from any source other than said proportion of said beneficial payments of members and interest thereon; that said fund is known as the "Emergency Fund" and was provided and is now held for the purpose of meeting the death claims of class "A", when and after the current mortuary fund of said class "A", known as the "Benefit Fund," is and shall be exhausted; that it is provided by Section 124 of the Benefit Laws of said corporation that:

"The amount set aside by these Laws, Rules and Regulations for the Benefit and Emergency Funds, shall be sacred and inviolate for the purpose for which they were created and no part thereof shall

be used for any other purpose. Such funds shall be held invested and disbursed for the use and benefit of the Association, and no member or beneficiary or beneficiaries shall have or acquire any individual property rights therein, or be entitled to apportionment or the surrender and return of any part thereof."

30/12 That said corporation, by and through its Executive Committee, has inaugurated and is carrying on a campaign to induce and persuade members of said corporation holding class "A" certificates to give up and lapse their said class "A" certificates and apply for and have issued to them class "B" certificates; that in pursuance of said plan said Executive Committee has wrongfully and unlawfully heretofore regularly adopted a law or resolution providing that, upon any member lapsing his or her class "A" certificate and having issued to him or her a class "B" certificate, a certain sum of money shall be taken from said Emergency Fund of class "A" and placed in and transferred to the mortuary fund of class "B"; that many members of class "A" have been persuaded and induced to lapse their class "A" certificates of insurance and take out certificates in class "B"; that a great sum of money, the exact amount of which is to your orators unknown, has thus wrongfully, unlawfully, in violation of the laws of said corporation and of the contract rights of class "A" members, been taken from the Emergency Fund of class "A" and placed in the mortuary fund of class "B". That said corporation and said Executive Committee intend, propose and threaten to continue in the future to take large sums of money from the Emergency Fund of class "A" and place it in the mortuary fund of class "B", a saforesaid, and that said corporation and said Executive Committee will continue in the future to practice this great wrong against your orators and all other members of class "A" unless prevented and restrained by this Honorable Court.

Eighth. That said corporation and said Executive Committee and the members thereof now occupy, and at all times mentioned herein have occupied, a trust position in receiving, handling, apportioning, and disbursing the monies paid to them by the members of class "A", and the interest and profits accruing thereon; that the accounts pertaining to the receipt, apportionment, transferring, and expenditure of all monies paid to said corporation by members of class "A" are extremely involved and complicated, extend over a great many years, and that such accounts cannot properly be taken except in a Court of Equity. That all books of accounts, papers and documents of all kinds whatsoever pertaining to and showing the afore-
30/13 said receipts, apportionments, transfers of funds and expenditures are in the possession of said The Supreme Tribe of Ben-Hur and in the custody of the aforesaid individual defendants.

In consideration whereof, and for as much as your orators have no sufficient protection at law for the wrongs done and threatened to be done, for the reasons hereinbefore stated, and for as much as such wrongs are only relievable in a Court of equity where matters of this kind are properly cognizable and reviewable.

Your orators, to the end that they may obtain the relief to which

they are justly entitled in the premises and that the said defendant, The Supreme Tribe of Ben-Hur may answer the premises, but not under oath or affirmation, an answer under oath being hereby expressly waived by your orators, they now pray the Court:

I.

That Your Honor grant to them your writ of subpœna directed to said The Supreme Tribe of Ben-Hur requiring and commanding it at a certain time to appear before this honorable Court and then and there full, true, direct and perfect answer make, but not under oath, to all and singular the premises, and to stand, perform and abide by such order, direction and decree as may be made against it in the premises, as shall seem meet and agreeable to equity.

II.

That the said defendant, The Supreme Tribe of Ben-Hur, may set forth an account of all and every sum and sums of money apportioned or appropriated by it, its officers or agents, from the aforesaid periodical payments of class "A" members to any purpose or use other than to meet and pay death claims arising in and against said class "A."

III.

That said defendant, The Supreme Tribe of Ben-Hur, may set forth an account of all and every sum and sums of money
30/14 received, apportioned or appropriated by it, its officers or agents, since June 1st, 1908, for, to or on account of any and all expenses, from each and every periodical payment, per capita tax, assessment or other money or payment received from each and every holder of a class "A" beneficial certificate, and of the uses, purposes and objects to which the same have been applied, disbursed and expended.

IV.

That the said defendant, The Supreme Tribe of Ben-Hur, may set forth an account of all and every sum and sums of money placed in or apportioned to the said Emergency Fund of said class "A", since the original incorporation of said defendant, and of all interest, rents, profits and accretions on or to said fund, and of all expenditures, transfers or subtractions from said fund, interest, rents, profits or accretions.

V.

That the said defendant, The Supreme Tribe of Ben-Hur, be compelled by decree of this honorable Court to restore, pay back and credit to the mortuary funds of said class "A" all and every sum and sums of money apportioned or appropriated by it, its officers or

agents, from the periodical payments of class "A" members to any purpose or use other than to meet and pay death claims arising in and against said class "A", with interest thereon at the rate of six per cent per annum from the time or times said sum or sums was or were so apportioned or appropriated.

VI.

That Your Honor determine and decree what item or items of the general expense of said defendant, The Supreme Tribe of Ben-Hur, should, in equity and fair dealing, since June 1st, 1908, have been borne and paid by class "A", and what item or items of such general expense should have been borne and paid by class "B"; what item or items should have been borne and paid jointly by said two classes, and the proportion in which each of said two classes should
30/15 have contributed to the payment of such items; and, charging class "A" with each and every item and share of such expense properly chargeable to it, that your Honor decree and require that said defendant restore, pay back and place to the credit of said class "A", from the funds of said class "B", each and every sum and sums of money found to have been paid, apportioned or expended out of the funds and receipts of class "A" for the use or benefit of class "B", with interest thereon at the rate of six per cent per annum from the time or times such sum or sums was or were so paid, apportioned or expended; and that Your Honor require said defendant to restore, pay back and place to the credit of said class "A" each and every sum and sums of money found to have been paid, apportioned or expended out of the funds and receipts of said class "A" for any expense or expenses not properly chargeable to said class, with interest thereon at the rate of six per cent per annum from the time or times such sum or sums were so paid, apportioned or expended.

VII.

That your Honor decree and require that the said defendant, The Supreme Tribe of Ben-Hur, restore, pay back and credit to the Emergency Fund of class "A" each and every sum and sums paid out, transferred or subtracted from said Emergency Fund, or from any interest, rents, profits, or accretions on or to said Emergency Fund, for, to or on account of any use, purpose or object other than to meet death claims arising in and against said class "A" and properly payable out of said fund, with interest thereon at the rate of six per cent per annum from the time or times such sum or sums was or were so paid, transferred or subtracted.

VIII.

That, upon final hearing herein, Your Honor grant unto your orators your writ of injunction, commanding the said defendants and each of them, their servants, agents and employees, and all persons under their authority, to absolutely and forever desist and re-

frain from apportioning or appropriating five per cent, or any part, of the periodical payments of said class "A" members to any use or purpose other than to meet or pay death claims arising in and against said class "A".

30/16

IX.

That Your Honor determine and decree what item or items or proportion of items of the general expense of the defendant, The Supreme Tribe of Ben-Hur, should in the future, in equity and fair dealing be borne and paid by said class "A", and what item or items or proportions of items of such expense should in the future be borne and paid by said class "B"; and that, upon the final hearing herein, Your Honor grant unto your orators your writ of injunction, commanding the defendants and each of them, their servants, agents and employees, to absolutely and forever desist and refrain from paying, apportioning or appropriating any money or monies paid in by or received from any member of class "A", or any rents, profits, interests or accretions on or to any such money or monies, for the benefit of class "B", or for any purpose, use, object or expense not properly chargeable to said class "A".

X.

That upon final hearing herein Your Honor grant to your orators your writ of injunction commanding the defendants, and each of them, their agents, servants and employees, to absolutely and forever desist and refrain from taking, transferring, apportioning or subtracting any portion of the Emergency Fund of class "A" to the mortuary fund of class "B", or to any use, purpose or object other than to meet and pay death claims arising in and against said class "A", and properly payable out of said Fund, and commanding them to hold and keep the said Emergency Fund of class "A" inviolate for the uses and purposes for which it was created.

XI.

That your Honor order and decree that your orators may be allowed and permitted to prosecute this action for the benefit of each and every member of class "A"; that the relief granted herein by Your Honor be ordered and decreed to apply to and be in favor of each and every member of said class "A".

30/17 & 18

XII.

And that your orators may have such other and further relief as to the Court may seem meet and proper, and which equity may require, and for costs.

L. J. CRAWFORD, JR.,
Solicitor for Complainants.

L. J. CRAWFORD,
Of Counsel.

30/19 In the District Court of the United States for the District of Indiana, May Term, 1913, May 26th, 1913.

In Recess.

No. 7. In Equity.

GEORGE BALME et al., Complainants,

vs.

THE SUPREME TRIBE OF BEN-HUR et al., Defendants.

Come now the defendants by Messrs. Crane and McCabe, and Messrs. Miller, Shirley, Miller and Thompson, their solicitors, and file their answer to the Bill of Complaint herein in the words and figures following, to-wit:

Answer to Complainants' Bill of Complaint.

The defendants, The Supreme Tribe of Ben-Hur, Royal H. Gerard, John C. Snyder, Samuel E. Voris, Jesse F. Davidson, John R. Bonnell and Gilbert H. Hazen, now and at all times hereafter saving to themselves all and all manner of benefit of exception or otherwise *than* can or may be had or taken to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereto or to so much thereof as said defendants are advised that it is material or necessary for them to make answer to, answering say:

30/20

I.

Said defendants admit that the Supreme Tribe of Ben-Hur is and at all times mentioned in said bill of complaint was and has been a corporation organized and existing under the laws of the State of Indiana and having its principal place of business within said State of Indiana, and that it is and at all times mentioned in said bill was a citizen and resident of said State of Indiana; that is to say, said Supreme Tribe of Ben-Hur was on the 8th day of January, 1894, organized as a corporation under the laws of said State of Indiana, and thereafter, towit, on the 20th day of February, 1900, said defendant Supreme Tribe of Ben-Hur was reincorporated under and pursuant to the statutes of the State of Indiana and ever since its original organization has been and now is a fraternal beneficiary association (not a fraternal beneficial insurance society, as described in said bill of complaint) organized for the purpose of conducting and conducting the business of a fraternal beneficiary society in said State and elsewhere under the laws thereof and having by virtue of the laws of said State of Indiana the right to sue and be sued and the right to contract and be contracted with.

Said defendants further admit that said Supreme Tribe of Ben-

Hur is and during said period of its existence has been authorized to adopt laws, rules and regulations to govern its business and that such laws, rules and regulations, as they exist or existed at the time a contract of insurance or beneficial certificate is or was issued by said corporation or as they may be or have been hereafter amended, are and were by the terms of each and every such contract of insurance or beneficial certificate issued by said corporation made a part of such contract or certificate.

II.

Said defendants further admit the averments of the second paragraph of said bill of complaint except the averment that Edward R. Bryson is a resident and citizen of the State of Indiana; as to said averments defendants deny the same.

III.

Said defendants are not sufficiently advised to enable them to state whether or not each and every one of said complainants
30/21 is a beneficial member of said corporation Supreme Tribe of Ben-Hur in good standing nor whether or not each of said complainants holds a beneficial certificate or contract of insurance issued to him or her by said corporation, nor are said defendants sufficiently advised to enable them to state herein whether or not the date of the beneficial certificate of each of said complainants, if in fact they each hold said certificates, is prior to July 1st, 1908, nor whether or not each and every one of said complainants belongs to Class A of the members of said corporation, if members at all.

Said defendants aver that there are at the present time more than one hundred and eighteen thousand members of said Supreme Tribe of Ben-Hur holding beneficial certificates therein whose names are recorded with reference to the local lodges or courts to which they belong and among which membership there are many persons having similar or identical names, and in the absence of a direct averment in said bill of complaint as to the particular court to which each of said complainants belongs, it is impossible for defendants to ascertain whether or not said averments of Paragraph III of said bill of complaint hereinbefore referred to are true or not.

Said defendants therefore neither admit nor deny the averments of Paragraph III of said bill of complaint touching the matters hereinbefore referred to in this paragraph of answer, but ask that complainants be required to make strict proof thereof.

Said defendants admit that there are now more than seventy thousand members in said Class A and that it is impracticable to join all of said Class A members as complainants in said bill of complaint; but said defendants deny that complainants' action is instituted for the benfit of each and every Class A member of said corporation, and they deny that the relief prayed for in complainants' said bill of complaint will redound to the benefit of each

and every member of said Class A; but on the contrary said defendants aver that complainants' said action is detrimental to all the members of said Class A and that if the relief prayed for in said complainants' bill of complaint should be granted, the result will be destructive to said Class A and highly injurious to each
30/22 and every member thereof, as will hereafter more particularly appear; and said defendants further aver upon information and belief that complainants' said action is prosecuted without the consent or approval and contrary to the wishes and desires of a very large majority of the members of said Class A.

Said defendants deny that the questions involved in this suit are of common and general interest to each and every member of said Class A.

IV.

Said defendants admit that the matter in controversy herein exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000), as alleged in the fourth paragraph of complainants' bill of complaint.

V.

Said defendants admit, as alleged in Paragraph V of complainants' bill of complaint, that it is provided by the articles of reincorporation of said defendant Supreme Tribe of Ben-Hur that said corporation shall have power to collect periodical payments from each member of such corporation for the purpose of providing a fund or funds to meet the death losses of said corporation.

Said defendants deny that said articles of reincorporation provide that the expenses of said corporation shall be met by and from a per capita tax levied upon each member of said corporation and by special assessments, but aver that by Section 15 of said Articles of reincorporation it is provided that:

"The fund or funds from which expenses of this association may be defrayed shall be derived from assessments or per capita tax collected from its members in accordance with the terms of its by-laws."

And said defendants further aver that by Section 3 of said articles of reincorporation it is provided that:

30/23 "The business and prudential concerns of the order shall be managed and its property controlled under such rules and regulations as have been or may hereafter be legally adopted by the following officers, namely, a past supreme chief, a supreme chief, a supreme judge, a supreme teacher, a supreme scribe, a supreme keeper of tribute, a supreme captain, a supreme guide, a supreme medical examiner, a supreme keeper of the inner gate, a supreme keeper of outer gate, and a board to be known as the 'Tribune,' to be composed of not less than five nor more than seventeen members * * *"

Said defendants further allege that the term "assessments," as used

in Section 15 of said articles of reincorporation, has been uniformly used and applied in the legislation of said defendant the Supreme Tribe of Ben-Hur and in its literature, rules, regulations and in the general administration of its prudential affairs as synonymous and interchangeable with the term "Monthly payments;" that by the statute under which said defendant corporation was organized it is provided that:

"The fund from which the expenses of such association shall be defrayed shall be derived from assessments or dues collected from its members."

Defendants further aver that by Section 5 of said articles of reincorporation it is provided that:

"The Executive Committee hereinafter provided for shall have exclusive power to adopt, amend, repeal, promulgate and enforce all rules and regulations pertaining (1) to the amount of death or disability benefits that may be provided or agreed to be paid to members, (2) to the rate of premium, monthly payment or dues to be paid by such members * * *. All such acts of the Executive Committee may be revised, approved or rejected at any regular meeting of the Supreme Tribe of Ben-Hur."

That by Section 7 of said articles of reincorporation it is provided that:

"The Executive Committee, which shall have full charge
30/24 and control of the business and prudential affairs of the association, shall be composed of a supreme chief, supreme scribe, supreme keeper of tribute, supreme medical examiner, and three other members of the Supreme Tribe of Ben-Hur to be elected as the other officers are selected."

Said defendants further aver that on the 8th day of May, 1899, it was duly enacted by said Supreme Tribe of Ben-Hur that the moneys derived from the monthly payments should be known as the benefit fund except fifteen per cent., as provided by Section 31, and that by said Section 31 it was provided that two-thirds of said fifteen per cent. should be set aside and known as the reserve or emergency fund, to be used to pay death claims and disability benefits and one-third of said fifteen per cent. should be used for the payment of expenses.

That thereafter, towit, at the regular session of said Supreme Tribe of Ben-Hur in the month of April, 1900, it was further enacted that all moneys derived from said monthly payments should be known as the benefit fund except that portion set aside for the reserve and general funds, as provided by said laws.

That by Sections 23 and 24 of said laws above referred to it was provided that of said sums so derived from said monthly payments eighty-five per cent. should go to constitute the benefit fund, ten per cent. to the reserve or emergency fund and five per cent. to the general or expense fund, and it was further provided by said laws that the Executive Committee should have the power to set aside and place

to the credit of the general fund (Expense fund) the first six monthly payments of the members except the ten per cent. which was required at all times to be placed in the emergency fund, so that in the discretion of the Executive Committee during the first six months ninety per cent. of the members' payments could be paid into the general fund and ten per cent. into the emergency fund and nothing into the benefit fund.

Said defendants deny that at any time since 1899 the laws of said Supreme Tribe of Ben-Hur have contained any provision requiring or directing that the proceeds of said monthly payments
30/25 should be used exclusively for the creation of a benefit fund, and aver that at all times since the existence of said order and especially since its said reincorporation said defendant Supreme Tribe of Ben-Hur has been authorized and required to carry at least five per cent. of the money so derived from said monthly payments to said general or expense fund and at least ten per cent. thereof to said reserve or emergency fund.

Said defendants deny that from the 20th day of February, 1900, until the date complainants' bill of complaint was filed or at any other time said defendant corporation by and through its Executive Committee has wrongfully and unlawfully or contrary to the express provisions of its charter appropriated and used five per cent. or any other portion of said periodical or monthly payments of the members of Class A for the general expenses of said corporation.

Said defendants admit that they have used five per cent. of the sums so collected from said periodical or monthly payments as and for the general expenses of said corporation ever since the 20th day of February, 1900, and they further state that from and during the years 1900 to 1907 inclusive they used of the funds derived from said monthly payments the sum of $198,634.93 for the general expense of said order in addition to the five per cent. above referred to, said sum of $198,634.93 being derived from the eighty-five per cent. (or a part thereof) which would have otherwise been paid into the benefit fund from the first six month payments of members and not otherwise, all as provided by the legislation of said order at that time in force.

But said defendants further aver that of said sum of $198,634.93 so carried to said general expense fund from said first six months monthly payments the sum of $27,840.46 was in the year 1903 found to be unnecessary for the payment of the expenses of said order and was thereupon transferred to and became a part of said benefit fund.

That for the years 1908 to 1912 both inclusive there was carried into the general or expense fund from the monthly payments made by members of Class A the sum of $258,527.05, being five per cent. of the total monthly payments of members of Class A during said period; that since 1908 it has not been necessary to use and
30/26 said defendant Supreme Tribe of Ben-Hur has not used any part of said monthly payments other than five per cent. for expense purposes and that in the future it will not at any time be necessary, as said defendants are now advised and believe, to use any part of the monthly payments of members of Class A other than said five per cent. for expense purposes.

Said defendants admit that it is their intention unless restrained and enjoined by this Honorable Court to continue in the future to use for expenses of said order five per cent. of said periodical or monthly payments of said members of Class A; but they deny that it is their purpose to use said sum or any sum except as they are authorized and required to use the same by the laws of said order and in the proper and prudent administration of its affairs.

Said defendants further aver that at all times since the organization of said Supreme Tribe of Ben-Hur its necessary and legitimate expenses have largely exceeded any sum that has been raised or could lawfully be raised by a per capita tax; that the only funds other than such as were derived from a per capita tax that have been available for the payment of said general expenses have been such as were derived from said monthly payments, and that said general expenses have been so paid, as hereinbefore alleged, from the proceeds of said monthly payments with the full knowledge, acquiescence and consent of all the members of said order, including the members of said Class A and including complainants in this cause.

Said defendants further aver that ever since the re-incorporation of said order Supreme Tribe of Ben-Hur the term "assessment" applied to fraternal beneficiary societies operating under the laws of Indiana has by the officers charged with the administration of said laws of said State, by the various fraternal beneficiary organizations operating thereunder, and by the public been uniformly and universally interpreted and construed as synonymous with "Monthly payments."

That said term assessment, wherever it occurs in the articles of incorporation of said Supreme Tribe of Ben-Hur, or in the laws, literature and proceedings thereof, is so used and employed in the sense of monthly payment or dues and is synonymous or
30/27 interchangeable therewith, and that said term is in fact synonymous with said terms monthly payments and dues and that all transactions of said defendant Supreme Tribe of Ben-Hur with respect to the disposition of the funds derived from said assessments, dues or monthly payments have occurred and been done and accomplished upon the reliance of said defendants in said identity of meaning, as established by the long, uniform and constant practical interpretation thereof as aforesaid. And that said Supreme Tribe of Ben-Hur never has at any time derived any funds from assessments or levied any assessments upon its members other than said regular monthly payments or assessment above referred to.

VI.

Said defendants admit that by the action of the regular biennial meeting of said Supreme Tribe of Ben-Hur held in the year 1908 a new class of beneficial members and beneficial certificates was created, called Class B; that all former beneficial members were designated as Class A members. That by the action of said meeting it was determined that all beneficial certificates issued after July 1st, 1908, should be Class B certificates and that no Class A certificates should be

issued after said date and no new members taken into said Class A after said date; that all beneficial certificates issued since said date have been Class B certificates; that no class A certificates have been issued and no Class A members taken into the corporation since said date. That Class B members pay a different rate for their insurance than that paid by Class A members; and that by the laws of said corporation the mortuary funds of said two classes are required to have been and are kept separate and distinct except that under the laws of said order in force since the creation of said Class B gains from forfeiture by lapse and interest earnings and savings from mortality in Class B, as determined by annual valuation, may be transferred to other funds designated by the Executive Committee, except the expense of general fund, to be used for the common advantage of all members holding certificates in Class A and Class B who are in good standing at the date of the transfer, but that the surplus funds from contributions of members holding certificates in Class A cannot and never have been used for the payment of current claims on
30/28 account of protection for members holding certificates in Class B; that since the creation of Class B there has been a saving to be used for the common advantage of all members of said Classes A and B in good standing from forfeitures by lapse, interest earnings and mortality experience amounting to approximately One Hundred Twenty-two Thousand Dollars ($122,000), including about Fifty-one Thousand Dollars ($51,000) equitably due Class B from the mergency fund on account of contributions to that fund by members who have since transferred to Class B, which, under the laws and rules of the said Supreme Tribe of Ben-Hur, by the order of the Executive Committee of said Supreme Tribe of Ben-Hur, is available for use for the common advantage of all members holding certificates in Class A and Class B.

Said defendants deny that in equity and good conscience all funds, receipts and expenditures of said two classes should be kept separate and distinct, but aver that the usual, ordinary and only practicable method of maintaining said general or expense fund in the administration of fraternal beneficiary societies comprising two or more classes and in the administration of the affairs of insurance companies generally is by creating and maintaining a single expense fund out of which all legitimate expenses of the organization are paid.

That it is impracticable and impossible to apportion accurately the expense attributable to the administration of each of said several classes in such organization, and that it is and has been ever since the creation of said Class B impossible to accurately apportion the expense properly chargeable to each of said Classes A and B in said Supreme Tribe of Ben-Hur without separating entirely the administration of the affairs of said respective classes by providing separate quarters, separate officers, agents and employes and separate bureaus of correspondence and other administrative features, all of which would vastly increase the total expense and would in a corresponding ratio decrease the efficiency and destroy the unity of said organization which are essential to the successful operation and maintenance of the same, including both classes thereof.

Said defendants admit that from July 1st, 1908, until the present time all money apportioned and appropriated for expenses
30/29 from the payments of members of both of said classes has by the action of said corporation by and through its said Executive Committee been placed in a common or general expense fund out of which have been paid the expenses of both of said classes without reference to the proportion of said expenses actually attributable to either. But said defendants deny that such payment sustains no just relation to the cost of administering said two classes and aver that said payments are just and equitable as between said two classes and approximately proportioned to the cost of maintaining each, and that said method of maintaining and paying said expenses is as nearly exact in its relation to the actual cost of maintaining each and therefore properly apportioned thereto as would be possible, even if said contributions were separated and separate expense funds maintained and an attempt made to divide the total expense upon some mathematical basis that would supposedly represent the relative cost of maintaining said two classes.

That any such attempt to separate said expense without maintaining entirely separate organizations, which would be wholly impracticable and the cost thereof prohibitive, would necessarily be theoretical and not actual or practicable in its operation.

Said defendants deny that the maintenance of said joint expense fund and the method of administering the same and paying the expenses of said order, as aforesaid, is or has been unfair, inequitable, wrongful or unlawful or that it has resulted or will result in the payment by the members of Class A of a greater proportion of the general expenses of said corporation than they should in equity and fair dealing be required to pay or that the same has resulted in the payment by said members of Class A of any sum proportionately larger than the cost of maintaining and operating said Class A is in comparison with the cost of operating and maintaining said Class B, and said defendants aver that on the contrary the maintenance of said joint expense fund and the payment of the entire expenses of said order therefrom, as alleged in said bill of complaint, has been of great and material benefit to said Class A and the members thereof,
30/30 has been proportionately smaller than the payments by said members of said Class B, and that in the future the contributions of said members of said Class A to said expense fund will be proportionately smaller than the contributions of said Class B members, if the present method of maintaining and operating said expense fund is continued, and will be vastly smaller and less burdensome to the members of said Class A than would be the adoption of any system or scheme involving the maintenance of a separate expense fund and the actual apportionment as between said respective classes of the expense of maintaining each, as will hereinafter more fully appear.

That while no formal classification was made of said beneficial membership of said Supreme Tribe of Ben-Hur prior to the creation of said Class B, nevertheless said membership in fact consisted of four separate classes prior to that time, which classification still per-

sists as subdivisions of said Class A, although not so formally designated.

That the first subdivision thereof consists of members whose certificates were issued prior to September 15th, 1895, and who at the entry age of eighteen secured for a monthly payment of one dollar a certificate for $3,000, and at the entry age of fifty-five for the monthly payment of one dollar a certificate for $1,000, the amount of certificates of members between said ages being graded according to the entry age of such member. The second class consists of members whose certificates were issued prior to February 1st, 1897, and who at the entry age of eighteen secured for the monthly payment of one dollar a certificate for $2,500, and at the entry age of fifty-five for the monthly payment of one dollar a certificate for $500, the amount of certificates of members between said ages being graded according to the entry age of such member. The third class consists of members whose certificates were issued prior to March 1st, 1901, and who at the entry age of eighteen secured for the monthly payment of one dollar a certificate for $2,000 and at the entry age of fifty-four for the monthly payment of one dollar a certificate for $500, the amount of certificates of members between said ages being graded according to the entry age of such member. The fourth class consists of members whose certificates were issued prior to July 1st, 1908, and who at the entry age of eighteen secured for the monthly payment of one dollar a certificate for $1,500 and at the entry age of forty-nine for the monthly payment of one dollar a certificate for $500, the
30/31 amount of certificates of members between said ages being graded according to the entry age of such member.

That notwithstanding the existence of said four classes (although not designated as such) the expenses of said order at all times prior to July 1st, 1908, as well as since that time, have been paid out of a single expense fund known and designated as the general fund, to which all the members of said order have contributed, and that at no time has any division or apportionment been made or attempted to be made as between said several classes, and that said method has been well known to all the members of said order, including complainants, during said entire period, and that they have uniformly acquiesced in and approved the same.

Said defendants admit that unless restrained and enjoined by this Honorable Court, it is the purpose of said Supreme Tribe of Ben-Hur by and through its proper officers, including its said Executive Committee, to continue to place all moneys apportioned and appropriated for expenses from the payments of both of said two classes A and B in a common fund and to pay all expenses of the corporation from such fund as aforesaid, and that they will do so unless so prevented, enjoined and restrained; but said defendants deny that such action results or has resulted or will result in the members of Class A paying thousands of dollars monthly or any other part or portion of the expenses of Class B, and they deny that since June 1st, 1908, any sum of money has by such action been taken and appropriated from the funds of Class A and expended for the benefit of said Class B.

Said defendants further aver that at no time has any sum been expended or taken from any of the funds of said order except such as have been reasonably necessary and proper in the conduct, maintenance and operation of said defendant corporation, and that all such expenditures have been beneficial to both of said classes and especially beneficial to said Class A and the members thereof.

VII.

Said defendants deny that there has been accumulated from the periodical payments of members of Class A during the
30/32 eighteen years since the founding of said corporation a fund now amounting to over $1,200,000 as alleged in the seventh paragraph of complainants' bill of complaint, but aver that there has been accumulated from the periodical payments of the members of said Supreme Tribe of Ben-Hur, including not only the present members of Class A but also those who have transferred to and are now members of Class B, a fund amounting on the 31st day of December, 1912, to $1,271,681.47, but defendants aver that during the year 1912, there was transferred from said emergency fund to the benefit fund of said Class A for the payment of death losses in said Class A, $227,393.93, and that from January 1st to April 15th, 1913, there has been transferred from said emergency fund to said benefit fund the further sum of $106,300.00 for the sole purpose of paying death losses to members of Class A and that no part of said emergency fund has ever been used for the payment of death losses in Class B or for any other purpose except the payment of death losses in Class A.

Said defendants admit that said fund has been contributed to by every person who has ever been a member of said Class A, whether said person has since died, been suspended from membership in said corporation or is now a member in good standing; and said defendants further admit that ten per cent. of the aforesaid periodical payments of said members has been set aside and placed in said fund and that said fund has received no contribution or accretion from any source other than said proportion of said beneficial payments of the members of said Supreme Tribe of Ben-Hur; said defendants admit that said fund is known as the "Emergency Fund," and was provided and is now used for the purpose of meeting the death claims of Class A when and after the current mortuary fund of said Class A, known as the "Benefit Fund" is and shall be exhausted, and that it is so provided by Section 124 of the benefit laws of said corporation, as set forth in Paragraph VIII of complainants' bill of complaint.

Said defendants deny that by and through the Executive Committee of said Supreme Tribe of Ben-Hur it has wrongfully or unlawfully inaugurated and is carrying on a campaign to induce and persuade members of said corporation holding Class A certificates to give up and lapse their said Class A certificates and
30/33 apply for and have issued to them Class B certificates; and said defendants deny that said defendant Supreme Tribe of Ben-Hur or its said Executive Committee has inaugurated or

conducted any campaign to induce members to lapse their Class A certificates, whether wrongful or unlawful or otherwise, but said defendants admit that they have during said period by and through the personal solicitation of their deputies and organizers and by the circulation of literature advised and solicited members to transfer to said Class B, from said Class A, and deny that such action has been injurious to complainants or the other members of said Class A, but on the contrary aver that said action has been highly beneficial to said Class A and the members thereof, including complainants, for that on and prior to the creation of said Class B it had been ascertained and demonstrated in the operation of said Supreme Tribe of Ben-Hur that the rates of insurance theretofore existing were and had always been grossly inadequate to provide for the payment of death losses occurring and thereafter to occur among the members of said order having beneficial certificates therein and entitled to protection in accordance with the provisions of their said respective certificates; and that unless some practicable and feasible means should at once be provided for the relief of the beneficial members of said Supreme Tribe of Ben-Hur, said entire organization would very soon be unable to pay its mortuary obligations as they matured and would rapidly disintegrate and ultimately disband, leaving no protection whatever for the members who should survive for any considerable period of time; that thereupon the Executive Committee and officers of said Supreme Tribe of Ben-Hur called to their assistance eminent insurance actuaries and other insurance experts having large experience in the history of insurance generally and that is known as fraternal beneficiary societies in particular, in order that they might determine upon and adopt the best plan and method of averting ultimate disintegration and insolvency with which their said organization was then threatened and which, without the adoption of some practicable plan of relief, would have resulted in the future, as aforesaid.

That after much investigation and upon the advice of experts so consulted said Supreme Tribe of Ben-Hur through its proper officers and Executive Committee finally devised and
30/34 adopted for submission to the supreme legislative body of said defendant a plan for the relief of the beneficial members of said order holding certificates of insurance as aforesaid, which plan so adopted included as its principal feature the creation of a new class of certificate holders which should be and was designated as "Class B" as distinguished from the then beneficial members of said order to be thereafter known as "Class A."

That under the conditions of said plan so devised members of said Class A became eligible to transfer to and become members of Class B without medical examination and at the ages at which they became members of said organization, without cost of transfer.

That in order to secure adequate protection to the members of said organization so transferring to said Class B as well as to those who should thereafter become members of said order by admission to said Class B, said Supreme Tribe of Ben-Hur through its Executive Committee and officers aforesaid caused to be prepared by experience- actuaries a table of rates based upon what is known as the

"National Fraternal Congress" rates, with certain additions or loading for expense purposes.

Said defendants further aver that thereafter, towit, at the supreme session of said Supreme Tribe of Ben-Hur, which is the highest legislative body of said order, said plan so devised and prepared was duly and fully submitted and explained to the representatives of the entire beneficial membership of said order there assembled and was thereupon unanimously approved and adopted in pursuance of authority vested in said Supreme Tribe of Ben-Hur to adopt, amend or repeal any laws, rules or regulations of said Supreme Tribe contained in the articles of reincorporation of said Supreme Tribe in pursuance of the power to amend the laws, rules and regulations of the order contained in the benefit certificates issued to each and every member of said order as hereinafter more particularly averred.

Said defendants further aver that the plan so adopted was the best and only practicable method known or existing for the relief of said organization and was the only method by which financial loss to the then beneficial membership of said organization could be averted and the integrity of the same secured.

30/35 That thereupon said Supreme Tribe of Ben-Hur through its said Executive Committee and other proper officers caused to be published and circulated among all the members of said organization, including complainants, full and detailed information concerning said plan so adopted, and that for nearly five years thereafter said entire membership, including said complainants, acquiesced in, consented to and approved the action so taken and continued thereafter without objection as members of said organization, enjoying during all of said period the insurance protection guaranteed by their respective certificates and participating in all the benefits and advantages of said organization as revised and improved by the creation of said Class B and the legislation incident thereto with full knowledge of the fact that said legislation provided for the maintenance of a general or common expense fund, as hereinbefore set out, with the privilege to transfer from Class A to Class B and the use of five per cent of the monthly payments of Class A members for expense purposes.

Said defendants further aver that from the time said Class B was created to the date upon which complainants' bill of complaint was filed approximately eight thousand five hundred and fifty-three members of said organization availed themselves of the privileges accorded by said plan of transfer so adopted and became members of said Class B, and that during the same period approximately forty thousand persons, exclusive of all lapsed memberships, have become new members of said organization by admission to said Class B, all in reliance upon said legislation of 1908 and the very general approval thereof and acquiescence therein by the members of said organization.

Said defendants further aver that said plan so devised and adopted, including the creation of said Class B and system of transfers thereto from said Class A, has been in all respects beneficial not only to said organization as a whole but also to the members of Class A who have

not transferred and that, whereas at the time said plan was adopted the per capita interest of the members of said organization in the mortuary fund thereof (the benefit and emergency funds thereof) amounted to $10.99, the per capita interest of the members of said Class A had on the 15th day of April, 1913, so far increased
30/36 as that it then amounted to the sum of approximately $17.37; and that, as shown by the experience of like societies under similar conditions, the per capita interest in said funds of those who elect to continue as members of Class A will still further greatly increase and the protection of such members under their said certificates of membership will be greatly enhanced.

Said defendants further aver that the conditions upon which such transfers were effected, as aforesaid, continued unchanged from the time of the adoption of said plan until the first day of June, 1912, and that from June 1st, 1912, to July 1st, 1913, members of said order were permitted to transfer from Class A to Class B without medical examination and without any cost of transfer, at from three to four years less than the attained ages of such members, except members above the age of fifty-five, who were permitted to transfer as of the age of fifty-five; that subsequent to July 1st, 1913, members of said order have been and are permitted to transfer without medical re-examination and without cost of transfer but at their attained ages at the time of transfer, except members who are fifty-five years of age or more, who have been and are permitted to transfer as of the age of fifty-five.

Said defendants admit that in pursuance of said plan so adopted said Supreme Tribe of Ben-Hur has regularly adopted a law or resolution providing that upon any member lapsing his or her Class A certificate and having issued to him or her a Class B certificate, a certain sum of money shall be taken from said emergency fund of Class A and placed in and transferred to the mortuary fund of said Class B; but said defendants deny that a great sum of money or that any money whatever has been taken from the emergency fund of said Class A under and pursuant to the resolution so adopted or otherwise and placed in the mortuary fund of said Class B, and they further deny that it was their intention at the time said complainants' bill of complaint was filed or at any time since or that it is now their intention to transfer any sums of money from said emergency fund of said Class A to the mortuary fund of said Class B unless and until it shall be adjudged and determined by this Honorable Court that said resolution so adopted was lawful and unless and until
30/37 in the administration of the prudential affairs of said organization it shall become necessary and proper so to do.

Said defendants further aver that in the adoption of said plan for the financial relief of the beneficial members of said organization in 1908, including the creation of said Class B and the system of transfers then and thereafter provided, and in the doing of each and every act charged in said bill of complaint and herein admitted or averred said Supreme Tribe of Ben-Hur and its said Executive Committee and officers have proceeded and acted in the utmost good faith and with the sole purpose of benefiting and preserving the rights and best

interests of the beneficial members of said organization, including complainants and the other present members of said Class A.

VIII.

Said defendants admit that said corporation Supreme Tribe of Ben-Hur and said Executive Committee and the members thereof now occupy and at all times mentioned in said bill of complaint have occupied a trust position in receiving, handling, apportioning and disbursing the moneys paid to them by the members of Class A and the interest and profits accruing thereon; that the accounts pertaining to the receipt, apportionment, transferring and expenditure of all moneys paid to said corporation by members of Class A are extremely involved and complicated, that they extend over a great many years, and that such accounts cannot properly be taken except in a court of equity. That all books of account, papers and documents of all kinds whatsoever pertaining to and showing the receipts, apportionments, transfers of funds and expenditures are in the possession of said the Supreme Tribe of Ben-Hur and in the custody of the aforesaid individual defendants; but said defendants deny that there has been any violation on the part of said defendants or any of them of the trust relation so existing and on the contrary aver that they have carried out and discharged in all respects their duties with reference to the matters pertaining to said trust relation, and they therefore deny that there is any cause for taking any account in a court of equity or otherwise, and aver that the matters charged in said bill of complaint, in so far as the averments thereof
30/38 are true, pertain to the internal management of said Supreme Tribe of Ben-Hur, a private corporation, and are therefore not the subject of judicial investigation or inquiry.

IX.

Said defendants are informed and believe and upon such information aver the fact to be that none of the complainants herein have ever paid to said Supreme Tribe of Ben-Hur the actual cost of carrying their insurance and have, therefore, not created or helped to create any reserve for maturing their own benefit certificates or those of other members of said organization.

The defendants further aver that the supreme legislative body of said Supreme Tribe of Ben-Hur is known and designated as the "Supreme Session," and under the laws of said order said Supreme Session holds regular biennial sessions; that said Supreme Session is composed of representatives elected from various districts or subdivisions of the order and that the only persons entitled to or who do vote for said representatives to said Supreme Session are the beneficial members of the order; that all the action taken by said Supreme Session, as averred in this answer, has been so taken at regular meetings of said Supreme Session of said defendant Supreme Tribe of Ben-Hur, in each and all of which said regular meetings these complainants were duly and regularly represented by their supreme representatives.

X.

Defendants further aver that by Section 16 of the articles of reincorporation of said Supreme Tribe of Ben-Hur adopted February 20th, 1900, it was and is provided:

"Section 16. The Supreme Tribe shall have the power to adopt by-laws for the government of itself and subordinate and other courts, not in conflict with the provisions of the articles of association, and to promulgate and enforce the same by the adoption and enforcement of suitable penalties, which penalties shall not be unusual or extreme in character. All Laws, Rules and Regulations of the
30/39 Supreme Tribe may be adopted, amended, or repealed by a majority vote of all members present and voting at any session of the Supreme Tribe, as provided by the laws, rules and regulations of the order."

That the foregoing provision of said articles of reincorporation of said defendant, Supreme Tribe of Ben-Hur, has never been abrogated, modified, repealed, or set aside, but is still in full force and effect.

Defendants further aver that in each benefit certificate issued by said defendants Supreme Tribe of Ben-Hur prior to July 15th, 1899, the following provision was contained:

"This certificate is issued subject to and to be construed and controlled by the laws, rules and regulations of the order."

That in each certificate issued by said Supreme Tribe of Ben-Hur from July 15th, 1899, to and including the 9th day of April, 1905, the following provision was contained:

"This certificate is issued subject to and to be construed and controlled by the laws, rules and regulations of the order now in force or which may hereafter be adopted."

That all the benefit certificates issued by said ~~defendant~~ *from* April 10th, 1905, to the 30th day of September, 1906, contained a provision agreeing to pay a definite amount to a named beneficiary,

"in accordance with the laws, rules and regulations of the Supreme Tribe of Ben-Hur, as the same exist or may be hereafter modified, changed, amended or enacted * * *."

"This certificate and said beneficial fund and the amount of monthly payments and assessments which may be made are each and all subject to be construed, administered and controlled by the laws, rules and regulations of the Supreme Tribe of Ben-Hur as they now exist or may hereafter be changed, altered or enacted, and it is understood that additional assessments may be made to
30/40 maintain said benefit fund. This certificate is issued in consideration of the warranty waivers and agreements made by said member in this certificate in his application to become a member of this association and of his agreement to comply with all

the laws, rules and regulations of the order as they now exist or may hereafter be changed, altered, amended or enacted, and in consideration of his agreement to pay the monthly payments and assessments and dues according to the laws, rules and regulations of the Supreme Tribe of Ben-Hur as they now exist or may hereafter be changed, altered, amended or enacted."

That in all benefit certificates issued by said Supreme Tribe of Ben-Hur from October 1st, 1906, to June 1st, 1908, the following conditions were contained:

"In consideration of the statements, conditions, agreements and warranties made in the application for this certificate of beneficiary membership and the statements made to the local medical examiner and incorporated in and subscribed to said application, and in consideration that said statements, conditions, agreements, and warranties are full, true, and complete and are material and not evasive, and upon the further agreement on the part of the applicant to be bound by the laws, rules and regulations of the Supreme Tribe of Ben-Hur as they are now in force or may hereafter be amended, changed or modified, and that applicant, hereinafter called member, shall make prompt payment of all monthly payments, dues, additional assessments that may be called, per capita tax, fines and demands, as provided for in the said laws, rules and regulations, which laws, together with the said application in this certificate, shall constitute the contract between said Supreme Tribe of Ben-Hur and his beneficiary * * *."

That the action of said Supreme Tribe of Ben Hur at its Supreme Session in creating Class B, in authorizing the transfer of persons who were beneficiary members of said defendant prior to June 1st, 1908, (thereafter to be designated as Class A) to Class B, and in authorizing the maintenance of a joint or common expense
30/41 fund to be known as the "General Fund" from which the expenses of both classes should be paid, and all other action taken by said Supreme Session of said defendant Supreme Tribe of Ben-Hur, as herein set out and averred, was taken in pursuance of the authority vested in said Supreme Tribe of Ben-Hur by said Section 16 of the articles of reincorporation of said Supreme Tribe of Ben-Hur and in pursuance of the power reserved in each of the benefit certificates issued to the members of said Supreme Tribe of Ben-Hur and hereinbefore in this subdivision set out.

Said defendants submit herewith a statement of the various amounts received, appropriated and apportioned by said Supreme Tribe of Ben-Hur and by its officers and agents since July 1st, 1908, for, to and on account of any and all expenses from each and every periodical payment, per captia tax, assessment or other money or payment received from each and every holder of a Class A beneficial certificate, classified according to the purposes for which they were severally expended, as required by the bill of complaint herein, which statement is made a part hereof by reference and marked "Exhibit A;" but said defendants are unable to trace contributions of

particular or individual members of Class A or of said Class A as a body to any particular expense or disbursement other than as shown in said Exhibit A for the reason that all contributions from the members of Class A together with all contributions from the members of Class B used for expense purposes were carried into a common expense fund and all disbursements for expense purposes made therefrom without division or apportionment.

Said defendants further submit herewith, as required by said bill of complaint, a statement of the sums placed in and apportioned to said emergency fund of said Class A since the original incorporation of said defendant and of all interest, rents, profits, and accretions on and to said fund, and of all expenditures, transfers or subtractions from said fund, interest, rents, profits or accretions, which statement is made a part hereof by reference and marked "Exhibit B."

Said defendants aver that within the time allowed for filing this answer they are not able to furnish said statements or either of them in greater detail, but aver that all books of account
30/42 in the possession of said defendants or the officers thereof are open to the inspection of complainants or any of their counsel or to such accountant or accountants as they may desire to examine the same, and said defendants aver their willingness to afford complainants any facilities they may reasonably desire to make said examinations pending this suit or upon the final hearing thereof or before the master, in the event the same shall be referred to a master, and said defendants further offer, if complainants shall desire or require a further or fuller statement of said accounts and if the Court shall so direct, to furnish the same upon such terms and conditions as may be fixed by the court; but said defendants aver that said accounts, including said expenditures, together with said apportionments to said emergency fund together with said interest, rents, profits and accretions thereto and subtrac-ions therefrom, are embodied in numerous large records consisting of thousands of pages and covering almost innumerable transactions, so that it is impracticable to furnish an entire detailed statement of all said transactions, without substantially copying the records and books of account of said defendant Supreme Tribe of Ben-Hur from the time of defendant's organization to the present time, and that such a document would be so cumbersome and voluminous as to unnecessarily encumber the records of the Court and serve no beneficial purpose in said cause, and would cost a very large sum of money and require many weeks of time, and said defendants therefore humbly pray that the Court shall direct what additional data, if any, defendants shall be required to furnish and that sufficient time be allowed for the preparation thereof.

And said defendants deny all and all manner of unlawful combinations and confederacy wherewith they are by said bill of complaint charged; and deny that complainants are without an adequate and complete effectual remedy at law; without this there is any other cause or thing in said complainants' said bill of complaint contained

material or necessary for these defendants to make answer to and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge or belief of this defendant, all of which matters and things this defendant is
30/43 ready and willing to aver, maintain and prove as this Honorable Court shall direct, and said defendants humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

THE SUPREME TRIBE OF BEN-HUR,
By ROYAL H. GERARD,
Supreme Chief.

ROYAL H. GERARD,
JOHN C. SNYDER,
SAMUEL E. VORIS,
JESSE F. DAVIDSON,
JOHN R. BONNELL,
[SEAL.] GILBERT H. HAZEN,
By CRANE & McCABE,
MILLER, SHIRLEY, MILLER &
THOMPSON,
Their Solicitors.

Attest:
JOHN C. SNYDER,
Supreme Scribe.

CRANE & McCABE,
MILLER, SHIRLEY, MILLER & THOMPSON,
Solicitors for said Defendants.

C. C. SHIRLEY,
W. H. THOMPSON,
Of Counsel.

Exhibit A.

Tribe of Ben-Hur.

Crawfordsville, Indiana.

Statement of Income and Disbursements, with Balances, from July 15, 1908, to January 8, 1909.

	Benefit fund.	Emergency fund.	General fund.	Total.
Balance July 15, 1908	$252,373.76	$830,517.82	$83,437.85	$1,166,329.43
Income:				
From Monthly Payments	466,285.42	55,759.80	47,801.29	569,846.51
Per Capita Tax	.....	.....	64,359.58	64,359.58
Membership Fees	.....	.....	584.50	584.50
Medical Fees	.....	.....	29.50	29.50
Total contributed by members	466,285.42	55,759.80	112,774.87	634,820.09
Interest	3,826.19	20,277.82	.....	24,104.01
Lodge supplies	.....	.....	2,574.87	2,574.87
Advertising	.....	.....	153.80	153.80
Total Income	470,111.61	76,037.62	115,503.54	661,652.77
Sum	$722,485.37	$906,555.44	$198,941.39	$1,827,982.20

EXHIBIT A—*Continued.*

Disbursements:	Benefit fund.	Emergency fund.	General fund.	Total.
For Death Claims	$451,033.00	.....	.....	$451,033.00
Disability Claims	3,462.50	.....	.....	3,462.50
Total benefits paid	454,495.50	.....	.....	454,495.50
Commissions paid to organizers	.....	.....	$46,404.70	46,404.70
Salaries of field managers	.....	.....	10,466.52	10,466.52
Salaries of officers	.....	.....	9,799.93	9,799.93
Executive Committee	.....	.....	3,025.65	3,025.65
Salaries of office employes	.....	.....	11,242.13	11,242.13
Medical Department	.....	.....	4,236.03	4,236.03
Traveling Expense	.....	.....	7,341.62	7,341.62
Insurance Department	.....	.....	50.00	50.00
Advertising, printing & stationery	.....	.....	6,332.33	6,332.33
Postage, express & telegraph	.....	.....	2,745.40	2,745.40
Lodge supplies	.....	.....	4,745.47	4,745.47
Official publication (The Chariot)	.....	.....	5,677.96	5,677.96
Supreme Meeting	.....	.....	987.25	987.25
Legal expense	.....	.....	1,829.04	1,829.04
Furniture & Fixtures	.....	.....	46.31	46.31
Repairs to real estate	.....	.....	10.42	10.42
Miscellaneous	.....	.....	1,312.88	1,312.88
Fraternal Congress	.....	.....	58.60	58.60
Total Disbursements	454,495.50	.....	116,303.24	570,798.74
Balance January 8, 1909	$297,389.87	$886,333.44	$82,638.15	$1,257,181.46

30/45 *Statement of Income & Disbursements, with Balances, from January 8, 1909, to January 7, 1910.*

	Benefit fund.	Emergency fund.	General fund.	Total.
Balance Jan. 8, 1909	$267,989.87	$906,555.44	$82,638.15	$1,257,183.46
Income.				
From monthly payments	988,383.20	108,046.60	119,531.38	1,215,963.18
Per Capita Tax	.....	.....	138,542.09	138,542.09
Membership Fees	.....	.....	1,528.25	1,528.25
Medical Fees	.....	.....	112.00	112.00
Total contributed by members	988,383.20	108,046.60	259,713.72	1,356,145.52
Interest & rents	8,273.08	37,549.10	1,386.14	47,208.32
Lodge Supplies	.....	.....	5,596.80	5,596.80
Advertising & sundries	.....	.....	930.47	930.47
Total income	996,658.28	145,595.70	267,627.13	1,409,881.11
Sum	$1,264,648.15	$1,052,151.14	$350,265.28	$2,667,064.57

Exhibit A—*Continued.*

Disbursements.	Benefit fund.	Emergency fund.	General fund.	Total.
For Death Claims	$908,580.89	.....	.....	$908,580.89
Disability claims	4,725.00	.....	.....	4,725.00
Total benefits paid	$913,305.89	.....	.....	$913,305.89
Commissions paid to organizers	.....	.....	$111,024.14	111,024.14
Salaries paid to organizers	.....	.....	10,595.75	10,595.75
Salary of agents	.....	.....	4,200.00	4,200.00
Salaries of officers	.....	.....	18,900.00	18,900.00
Executive Committee	.....	.....	6,988.71	6,988.71
Salaries of office employes	.....	.....	28,417.50	28,417.50
Medical Department	.....	.....	9,100.00	9,100.00
Traveling expense	.....	.....	12,235.54	12,235.54
Insurance Departments	.....	.....	1,046.15	1,046.15
Rent	.....	.....	800.00	800.00
Advertising, printing & stationery	.....	.....	10,296.86	10,296.86
Postage, express & telegraph	.....	.....	5,316.33	5,316.33
Lodge supplies	.....	.....	10,613.36	10,613.36
Official publication	.....	.....	14,322.77	14,322.77
Legal expense	.....	.....	5,326.03	5,326.03
Furniture & Fixtures	.....	.....	2,249.46	2,249.46
Taxes & repairs	.....	.....	327.66	327.66
Miscellaneous expense	.....	.....	3,510.95	3,510.95
Fraternal Congresses	.....	.....	600.80	600.80
Total disbursements	913,305.89	.....	253,782.01	1,169,087.90
Balance January 7, 1910	$351,342.26	$1,052,151.14	$94,183.27	$1,497,976.67

Tribe of Ben-Hur.

Crawfordsville, Indiana.

Statement of Income & Disbursements, with Balances, from January 8, 1910, to January 7, 1911.

	Benefit fund.	Emergency fund.	General fund.	Total.
Balance January 8, 1910	$351,342.26	$1,052,131.14	$94,483.27	$1,497,976.67
Income.				
From membership fees	.....	.....	1,712.50	1,712.50
Monthly payments, first year	77,118.78	.....	76,730.72	153,849.50
Monthly payments, subsequent	951,161.17	102,954.20	59,964.93	1,114,080.30
Per Capita tax	.....	.....	129,691.20	129,691.20
Medical fees	.....	.....	118.85	118.85
Total contributed by members	1,028,279.95	102,954.20	268,218.20	1,399,452.35
Deduct payments returned	153.00	.....	300.82	453.82
Net amount contributed by members	1,028,126.95	102,954.20	267,917.38	1,398,998.53
Interest on mortgage loans	1,699.70	11,814.78	343.07	13,857.44
Interest on bonds	6,544.26	34,204.94	.....	40,749.20
Interest on deposits	1,711.00	500.66	478.28	2,759.94
Rents	.....	285.33	1,155.00	1,440.33
Lodge supplies	.....	.....	4,915.13	4,915.13
Advertising	.....	.....	1,201.64	1,201.64
Total Income	1,038,081.80	149,849.91	275,990.70	1,463,922.21
Sum	$1,389,424.06	$1,202,001.05	$370,473.77	$2,961,898.88

EXHIBIT A—*Continued.*

30/47 Disbursements.

	Benefit fund.	Emergency fund.	General fund.	Total.
For death claims	$1,092,022.67	.....	.....	$1,092,022.67
Disability claims	6,450.00	.....	.....	6,450.00
Total benefits paid	1,098,472.67	.....	.....	1,098,472.67
Commissions paid to organizers	.....	.....	$108,507.07	108,507.07
Salaries of organizers	.....	.....	23,251.34	23,251.34
Salaries of officers	.....	.....	19,000.00	19,000.00
Executive & other Committees	.....	.....	4,572.32	4,572.32
Salaries of employes	.....	.....	28,339.48	28,339.48
Medical Department	.....	.....	7,000.00	7,000.00
Traveling expense	.....	.....	19,422.02	19,422.02
Insurance Departments	.....	.....	763.75	763.75
Rent	.....	.....	800.00	800.00
Advertising, printing & stationery	.....	.....	12,534.46	12,534.46
Postage, express & telegraph	.....	.....	5,840.85	5,840.85
Lodge supplies	.....	.....	10,663.29	10,663.29
Official publication	.....	.....	18,324.24	18,324.24
Supreme Meeting	.....	.....	5,194.99	5,194.99
Legal expense	.....	.....	4,827.10	4,827.10
Furniture & Fixtures	.....	.....	113.05	113.05
Taxes & repairs on real estate	.....	.....	789.16	789.16
Miscellaneous	.....	.....	4,277.77	4,277.77
Fraternal Congresses	.....	.....	522.50	522.50
Total Disbursements	1,098,472.67	1,202,001.05	274,743.39	1,373,216.06
Balance January 7, 1911	$290,951.39	$1,202,001.05	$95,730.38	$1,588,682.82

Statement of Income & Disbursements, with Balnaecs from January 8, 1911, to January 7, 1912.

	Benefit fund.	Emergency fund.	General fund.	Total.
Balance January 8, 1911	$290,951.39	$1,202,001.05	$95,730.38	$1,588,682.82
Income.				
From membership fees	.....	.....	1,668.50	1,668.50
Monthly payments, first year	100,504.09	.....	93,524.73	194,028.82
Monthly payments, subsequent	999,460.00	99,522.70	66,768.80	1,165,751.50
Per Capita Tax	.....	.....	126,351.34	126,351.34
Medical Fees	.....	.....	115.26	115.26
Total contributed by members	1,099,964.09	99,522.70	288,428.63	1,487,915.42
Deduct payments returned	282.27	.....	250.22	532.49
Net amount contributed by members	1,099,681.82	99,522.70	288,178.41	1,487,382.93
Interest on mortgage loans	1,671.66	15,515.70	.....	17,187.36
Interest on bonds	6,558.12	42,368.95	990.00	49,917.07
Interest on deposits	1,535.80	1,004.49	298.55	2,838.84
Rents	.....	835.50	1,309.00	2,144.50
Lodge supplies	.....	.....	5,478.32	5,478.32
Advertising	.....	.....	454.11	454.11
Tender of payments refused	66.67	.....	184.53	251.20
Total Income	1,109,514.07	159,247.34	296,892.92	1,565,654.33
Sum	$1,400,465.46	$1,361,248.39	$392,623.30	$3,154,337.15

EXHIBIT A—*Continued.*

Disbursements.	Benefit fund.	Emergency fund.	General fund.	Total.
For death claims	$1,146,124.09	.....	.....	$1,146,124.09
Disability claims	8,200.00	.....	.....	8,200.00
Total benefits paid	1,154,324.09	.....	.....	1,154,324.09
Commissions paid to organizers	.....	.....	$143,334.32	143,334.32
Salaries paid to organizers	.....	.....	26,314.81	26,314.81
Salaries of officers	.....	.....	19,000.00	19,000.00
Executive & other Committees	.....	.....	4,651.98	4,651.98
Salaries of office employes	.....	.....	28,868.00	28,868.00
Medical Department	.....	.....	8,800.00	8,800.00
Traveling Expense	.....	.....	26,729.96	26,729.96
Insurance Departments	.....	.....	800.82	800.82
Rents	.....	.....	800.00	800.00
Advertising, printing & stationery	.....	.....	15,093.08	15,093.08
Postage, express & telegraph	.....	.....	6,273.87	6,273.87
Lodge supplies	.....	.....	11,321.93	11,321.93
Official publication	.....	.....	26,164.31	26,164.31
Legal expense	.....	.....	6,626.35	6,626.35
Furniture & fixtures	.....	.....	1,630.92	1,630.92
Taxes & repairs on real estate	.....	.....	515.76	515.76
Miscellaneous	.....	.....	5,856.90	5,856.90
Fraternal Congress	.....	.....	252.08	252.08
Special Meeting of the Society	.....	.....	7,526.29	7,526.29
Premium & interest on bonds charged off	135.22	7,215.75	690.00	8,040.97
Total disbursements	1,154,459.31	7,215.75	341,251.38	1,502,926.44
Balance, January 7, 1912	$246,006.15	$1,354,032.64	$51,371.92	$1,651,410.71

	Benefit fund.	Emergency fund.	General fund.	Total.
Balance January 8, 1912	$246,006.15	$1,354,032.64	$51,371.92	$1,651,410.71
Income.				
From membership fees	.....	.....	1,717.00	1,717.00
Monthly payments, first year	68,958.89	.....	122,754.83	191,713.72
Monthly payments, subsequent	1,043,549.30	93,973.10	74,184.10	1,211,706.50
Per Capita tax	.....	.....	110,462.62	110,462.62
Medical Fees	.....	.....	108.00	108.00
Total contributed by members	1,112,508.19	93,973.10	309,226.55	1,515,707.84
Deduct payments returned	372.98	.....	156.82	529.80
Net amount conributed by members	1,112,135.21	93,973.10	309,069.73	1,515,178.04
Interest on mortgage loans	2,334.16	15,285.86	.....	17,620.02
Interest on bonds	5,001.16	42,260.98	.....	47,262.14
Interest on deposits	1,622.31	435.24	36.58	2,094.13
Rents	2,450.00	5,869.00	266.00	8,585.00
Lodge supplies	.....	.....	5,800.96	5,800.96
Advertising	.....	.....	2,080.73	2,080.73
Sale of old furniture	.....	.....	841.25	841.25
Payments returned	23.54	.....	34.62	58.16
Surety Bonds	.....	.....	702.50	702.50
Borrowed money	.....	.....	15,000.00	15,000.00
Profit on sale of bonds	.....	280.00	.....	280.00
Total Income	1,123,566.38	158,104.18	333,832.37	1,615,502.93
Sum	$1,369,572.53	$1,512,136.82	$385,204.29	$3,266,913.64

EXHIBIT A—*Continued.*

Disbursements.	Benefit fund.	Emergency fund.	General fund.	Total.
For death claims	$1,206,721.94	.....	.....	$1,206,721.94
Disability claims	4,825.00	.....	.....	4,825.00
Old age benefits	6,750.00	.....	.....	6,750.00
Total benefits paid	1,218,296.94	.....	.....	1,218,296.94
Commissions paid to organizers	.....	.....	$126,838.85	126,838.85
Salaries paid to organizers	.....	.....	29,644.67	29,644.67
Salaries to agents not organizers	.....	.....	6,300.00	6,300.00
Salaries of officers	.....	.....	20,585.62	20,585.62
Executive & other Committees	.....	.....	3,762.47	3,762.47
Salaries of office employes	.....	.....	34,272.79	34,272.79
Medical Department	.....	.....	8,774.96	8,744.96
Traveling expense	.....	.....	26,801.01	26,801.01
Insurance Departments	.....	.....	1,607.55	1,607.55
Rent	.....	.....	3,182.00	3,182.00
Advertising, printing & stationery	.....	.....	26,275.42	26,275.42
Postage, express & telegraph	.....	.....	7,779.20	7,779.20
Lodge supplies	.....	.....	5,024.69	5,024.69
Official publication	.....	.....	24,212.55	24,212.55
Supreme Meeting	.....	.....	5,022.41	5,022.41
Legal expense, litigating claims	.....	.....	2,094.33	2,094.33
Other legal expense	.....	.....	3,000.00	3,000.00
Furniture & fixtures	.....	.....	7,123.52	7,123.52
Taxes & repairs on real estate	.....	4,388.99	417.35	4,756.34
Miscellaneous expense	.....	.....	427.43	427.43

Fraternal Congresses	.....	.....	4,145.39	4,145.39
Inspection of risks	.....	.....	440.10	440.10
Surety Bonds	.....	.....	549.89	549.89
Donations	.....	.....	1,283.77	1,283.77
Rent of safety deposit	.....	.....	211.25	211.25
Actuarial fees	.....	.....	54.00	54.00
Premiums & interest on bonds charged off	.....	8,722.43	399.80	399.80
	.....	.....	.....	8,722.43
Total Disbursements	1,218,296.94	13,061.42	350,231.02	1,581,589.38
Balance before transfers	151,275.59	1,499,075.40	34,973.27	1,685,324.26
Transfers	227,393.93	227,393.93	.....	.....
Balance January 7, 1913	378,669.52	1,271,681.47	34,973.27	1,685,324.26

EXHIBIT A—*Continued.*

30/52

Tribe of Ben-Hur.

Crawfordsville, Indiana.

Statement of Income & Disbursements, with Balances, from January 8, 1913, to April 15, 1913.

	Benefit fund.	Emergency fund.	General fund.	Total.
Balance January 8, 1913	$378,669.52	$1,271,681.47	$34,973.27	$1,685,324.26
Income.				
From monthly payments	287,494.04	21,666.70	61,541.97	370,702.71
Per Capita Tax	.....	.....	11,205.14	11,205.14
Membership Fees	.....	.....	348.00	348.00
Medical fees	.....	.....	23.00	23.00
Total contributed by members	287,494.04	21,666.70	73,118.11	382,278.85
Deduct payments returned	94.36	.....	.....	94.36
Net amount contributed by members	287,399.68	21,666.70	73,118.11	382,184.49

Interest & rents	3,402.76	7,995.97	63.71	11,462.44
Lodge supplies	.....	.....	1,389.79	1,389.79
Advertising & printing	.....	.....	760.14	760.14
Commissions charged	.....	.....	1,374.25	1,374.25
Profit on sale of bonds	.....	372.60	.....	372.60
Payments returned	.....	.....	20.17	20.17
Organizers' bonds	.....	.....	2.50	2.50
Total income	290,802.44	30,035.27	76,728.67	397,566.38
Sum	$669,471.96	$1,301,716.74	$111,701.94	$2,082,890.64

EXHIBIT A—*Continued.*

Disbursements.	Benefit fund.	Emergency fund.	General fund.	Total.
For death claims	367,026.74	.....	.....	367,026.74
Disability claims	8,549.50	.....	.....	8,549.50
Total benefits paid	375,576.24	.....	.....	375,576.24
Commissions paid to organizers	.....	.....	27,194.24	27,194.24
Salaries paid to organizers	.....	.....	3,732.50	3,732.50
Salaries & com. of field managers	.....	.....	18,253.15	18,253.15
Salaries of officers	.....	.....	6,308.31	6,308.31
Executive & other committees	.....	.....	900.00	900.00
Salaries of office employes	.....	.....	11,327.32	11,327.32
Medical Department	.....	.....	1,166.66	1,166.66
Traveling expense	.....	.....	7,131.45	7,131.45
Insurance Department	.....	.....	1,658.08	1,658.08
Rent	.....	.....	168.00	168.00
Advertising, printing & stationery	.....	.....	5,332.39	5,332.39
Postage, express & telegraph	.....	.....	2,940.75	2,940.75
Lodge supplies	.....	.....	1,428.03	1,428.03
Official publication	.....	.....	5,338.92	5,338.92
Legal expense	.....	.....	1,623.28	1,623.28
Furniture & fixtures	.....	.....	638.35	638.35
Taxes & repairs on real estate	2,505.02	90.97	.....	2,595.99
Miscellaneous	.....	.....	159.94	159.94
Fraternal Congress	.....	.....	312.50	312.50
Medical inspection	.....	.....	112.76	112.76
Bonds of organizers	.....	.....	159.75	159.75

Note paid with interest	.....	.....	15,125.00	15,125.00
Interest on bonds purchased	361.11	144.44	.....	505.55
Total disbursements	378,442.37	235.41	111,011.38	489,689.16
Balance before transfers	291,029.59	1,301,481.33	690.56	1,593,201.48
Transfers	56,300.00	56,300.00	.....	.....
Balance April 15, 1913	$347,329.59	$1,245,181.33	$690.56	$1,593,201.48

This balance consists of

Mortgage loans on real estate	$318,425.00
Bonds owned by the society	975,077.41
Real estate owned by the society	225,686.38
Cash in safe	100.00
Deposits in banks	73,912.69
Total as above	$1,593,201.48

Receipts from per capita tax from members of Class A for the years 1908 to 1912, inclusive:

1908	$139,937.85
1909	138,542.09
1910	129,691.20
1911	126,351.34
1912	110,462.62
Total	$644,985.10

EXHIBIT B.

Statement of Income & Disbursements of Emergency Funds (Formerly Reserve Fund) from March 1, 1894, to April 15, 1913.

Tribe of Ben-Hur, Crawfordsville, Indiana.

Year.	Income. From monthly payments.	Interest and rents.	Total.
1894	$347.95	.....	347.95
1895	2,115.25	.....	2,115.25
1896	6,529.15	.....	6,529.15
1897	12,193.65	462.28	12,655.93
1898	16,546.65	745.07	17,291.72
1899	22,816.60	1,483.29	24,299.89
1900	33,948.35	2,699.18	36,647.53
1901	51,819.30	3,607.30	55,426.60
1902	62,719.60	5,333.71	68,053.31
1903	73,808.60	9,419.02	83,227.62
1904	83,924.60	13,045.24	96,969.84
1905	93,465.00	14,876.12	108,341.12
1906	99,986.10	18,039.41	118,025.51
1907	107,352.40	24,173.50	131,525.90
1908	112,557.50	32,540.62	145,098.12
1909	108,046.60	37,549.10	145,595.70
1910	102,954.20	46,895.71	149,849.91
1911	99,522.70	52,508.89	152,031.59
1912	93,973.10	64,131.08	158,104.18
1913	21,666.70	8,368.57	30,035.27
	$1,206,294.09	$335,878.09	$1,542,172.09

Year.	Disbursements. Taxes, repairs, etc.	Premium and interest.	Transferred to benefit fund.	Balance.
1894	.....	.....	.....	$347.95
1895	.....	.....	.....	2,463.20
1896	.....	.....	.....	8,992.35
1897	.....	.....	.....	21,648.28
1898	.....	.....	.....	38,940.00
1899	.....	.....	.....	63,239.89
1900	.....	.....	.....	99,887.42
1901	.....	.....	.....	155,314.02
1902	.....	.....	.....	223,367.38
1903	.....	.....	.....	306,594.95
1904	.....	.....	.....	403,564.79
1905	.....	.....	.....	511,905.91
1906	.....	.....	.....	629,931.42
1907	.....	.....	.....	761,457.32
1908	.....	.....	.....	906,555.44
1909	.....	.....	.....	1,052,151.14
1910	.....	.....	.....	1,202,001.05
1911	.....	.....	.....	1,354,032.64
1912	$1,338.99	$8,722.43	$227,393.93	1,271,681.47
1913	90.97	144.44	56,300.00	1,245,181.33
	$1,429.96	$8,866.87	$283,693.93	

EXHIBIT B—*Continued.*

Summary.

	From monthly payments.	Interest and rents.	Total.
Total received from monthly payments		$1,206,294.00	
Interest and Rents		335,878.09	
Total Income			$1,542,172.09
Paid for taxes, repairs & expense on real estate		$4,429.96	
Premium & interest on bonds purchased		8,866.87	
Transferred to Benefit Fund (Interest of 1911)	$2,169.91		
Transferred to Benefit Fund for payment of Class A claims	281,524.02		
Total amount transferred		$283,693.93	
Total disbursements			296,990.76
Balance in Emergency Fund, April 15, 1913			$1,245,181.33

30/56 In the District Court of the United States for the District of Indiana.

No. 7. In Equity.

GEORGE BALME et al.

vs.

THE SUPREME TRIBE OF BEN-HUR et al.

At Indianapolis, in said District, on the 9th day of July, 1913, before the Honorable Francis E. Baker, Circuit Judge:

Order of Reference.

By consent of parties this cause is now referred to Edward Daniels, Esq., Standing Master in Chancery of this court, to hear proof on the issues joined herein, and report his findings of facts and conclusions of law thereon.

This order of reference is made without prejudice to, and shall not be vacated by, the filing of additional interrogatories and answers thereto, or the filing in the future, by leave of court, of any amendments to any of the pleadings. An extension of time is hereby granted in that complainants are allowed twenty (20) days from and after the filing of sufficient answers to the interrogatories filed by them and to be filed in which to present this order to the Master for a hearing.

The interrogatories and answers thereto heretofore filed and to be filed may be presented to and considered by the Master under this order of reference.

30/57 In the District Court of the United States for the District of Indiana, November Term, 1914, January 8th, 1915.

Before the Honorable Albert B. Anderson, Judge.

No. 7. In Equity.

GEORGE BALME et al.

vs.

THE SUPREME TRIBE OF BEN-HUR et al.

Comes now Edward Daniels, Esq., Master in Chancery, and files his report and evidence herein, which report is in the words and figures following, to-wit:

Master's Report.

To the Honorable Albert B. Anderson, Judge of said District Court:

The undersigned, Master in Chancery, to whom said suit was referred with direction to take the testimony and report the same with his findings of fact and conclusions of law thereon, respectfully reports as follows:

At the times and places designated in notices to the respective parties for the taking of testimony said Master was present and was attended by the respective solicitors of the complainants and the defendants; that witnesses were produced before said Master by both the complainants and defendants and gave their testimony; that the testimony of the witnesses so produced was taken down in shorthand by Mr. Rowland Evans, the official stenographer of said Court, and the same was by said stenographer written out in longhand and is contained in two volumes of evidence which are identified by the signature of said Master in Chancery and which are returned herewith together with all the exhibits referred to by said witnesses,
30/58 including certain detached exhibits which it was stipulated by the parties should not be copied at length, but should be returned by the Master with his report into Court, and that said exhibits and each of them should have the same force and effect as evidence as though they had been copied at length into the record. That the complainants introduced and read in evidence the depositions of the following named witnesses produced by the complainants, to-wit: William G. Mittendorf, John Lang, George Balme, L. P. Vander Voort, Arthur F. Ross and Emma King; the said depositions, comprising volume Three of the bound volumes of evidence in this case and being identified by the signature of said Master in Chancery, are returned herewith and submitted to the Court as a part of such evidence.

Upon the pleadings and testimony the said Master makes and states the following:

Findings of Fact.

I.

That the following named complainants were at the time the bill of complaint herein was filed members in good standing in Class "A" (hereinafter described) of the Supreme Tribe of Ben-Hur and were citizens and residents of the States set opposite their respective names, to-wit:

	Charles W. Mittendorf	Ohio
	Albert C. Mittendorf	Ohio
	Charles G. Micheau	Kentucky
	Charles Steffens	Ohio
	J. M. Birsinger	Ohio
	M. A. Brawley	Ohio
	Edith A. Brawley	Ohio
	Charles F. Fox	Illinois
	Mary Fox	Illinois
	Louisa P. Mageer	Kentucky
	Louis Oberhelman	Ohio
	Louisa Oberhelman	Ohio
	Sutton B. Dodds	Ohio
	Cæsar Wrede	Ohio
	Nellie Wrede	Ohio
	Margarette Wrede	Ohio
	Wallace Edwards	Ohio
	Mary Edwards	Ohio
30/59	John Edwards	Ohio
	George R. Myers	Ohio
	Laura H. Myers	Ohio
	William G. Mittendorf	Ohio
	Emma B. Mittendorf	Ohio
	Mrs. Kate Bennett	Ohio
	Charles Pluckebaum	Ohio
	Dorothy Pluckebaum	Ohio
	James R. Micheau	Ohio
	Amelia Micheau	Ohio
	Charles Miller	Ohio
	R. M. Hillsinger	Ohio
	Lida Kraemer	Ohio
	J. W. Kraemer	Ohio
	Warren E. Sanders	Ohio
	Mrs. E. A. Sanders	Ohio
	Jos. M. Williams	Ohio
	Winnie Meehan	Ohio
	Martin Davit	Ohio
	William Davit	Ohio
	Albert Dietrich	Ohio
	Delia Dietrich	Ohio
	Wm. Sauer	Ohio

Walter J. Lindsey ..... Ohio
John Lange ..... Ohio
Paul Dorne ..... Kentucky
Ben Hilz ..... Kentucky
Ben Schlagheck ..... Ohio
Millard McAuley ..... Ohio
Jacob Adams ..... Ohio
Henry Nobbe ..... Ohio
John Mutz ..... Ohio
Jacob Holzworth ..... Ohio
Louis Kaiser ..... Ohio
Fred Bretthauer ..... Ohio
Henry Staudt ..... Ohio
Jos. Dellitol ..... Ohio
Fred Mack ..... Ohio
Geo. Ritter ..... Ohio
Chas. Stammel ..... Ohio
Danl. Poggendick ..... Ohio
Richard Wittenberg ..... Ohio
Kate Weissman ..... Ohio
Andreas Kaltwasser ..... Ohio
Henry Kaltwasser ..... Ohio
August Bunges ..... Ohio
Dominick Plume ..... Ohio
Emil Gau ..... Ohio
30/60 Frank Klaus ..... Ohio
William Schreiber ..... Ohio
John Aeschbach ..... Ohio
Chas. Boegli ..... Ohio
Frank Funke ..... Ohio
Geo. Hemmerding ..... Ohio
William Pape ..... Ohio
Frederick Knapp ..... Ohio
August Bouchounet ..... Ohio
Chas. Bouchounet ..... Ohio
Jacob Heinrich ..... Ohio
John Ley ..... Ohio
Harry Mack ..... Ohio
John Ungerbuehler ..... Ohio
Chas. Schmidt ..... Ohio
Chas. Hamberger ..... Ohio
Sophie Ryder ..... Ohio
George Balme ..... Kentucky
L. P. Vander Voort ..... Kentucky
Chas. Bradstettner ..... California
Minnie Carter ..... Vermont
W. A. Clark ..... Ohio
Ada Clark ..... Ohio
Mary Coleman ..... Ohio
Martha Costello ..... Oregon
J. A. Delaney ..... Texas
Margaret Delaney ..... Arkansas

Martin Duke ..... Ohio
H. L. Edwards ..... Ohio
E. Q. Fleming ..... Ohio
W. H. Haigh ..... Illinois
C. M. Haigh ..... California
A. H. Inderrieden ..... Ohio
B. Y. Jacobs ..... Ohio
Garnet Jacobs ..... Ohio
Daisy D. Jones ..... Ohio
Dan Kayenaugh ..... Ohio
Clara Kavanaugh ..... Ohio
Edward Merz ..... Ohio
Margaret Merz ..... Ohio
John Mandre ..... Ohio
Ida McCue ..... Ohio
Amelia Rust ..... Ohio
Ernest Roesch ..... Illinois
Jennie Roesch ..... Illinois
Kate Segar ..... Ohio
Martha Senour ..... Ohio
Clara Schoedinger ..... Alabama
30/61 O. R. Strawn ..... Ohio
Bessie Strawn ..... Ohio
Margaret Westcott ..... Ohio
Leonard Westcott ..... Ohio
H. Wedig ..... Ohio
F. A. Zweifel ..... Ohio
Chas. B. Allen ..... Kentucky
Nellie Albers ..... Kentucky
Mary E. Axer ..... Kentucky
Harriott Balme ..... Kentucky
A. H. Bryant ..... Kentucky
John Barker ..... Kentucky
Richard Burke ..... Kentucky
Hazel Burke ..... Kentucky
H. J. Bailer ..... Kentucky
Robt. Black ..... Kentucky
Katie Black ..... Kentucky
George Brink ..... Kentucky
O. J. Carpenter ..... Kentucky
W. E. Carbery ..... Kentucky
Wm. Christophel ..... Kentucky
Martha Christophel ..... Kentucky
Mary Clark ..... Kentucky
Walter Cleary ..... Kentucky
Lou R. Clements ..... Kentucky
Thos. Coleman ..... Kentucky
Nioman Conley ..... Kentucky
Eliza Cook ..... Kentucky
John Corless ..... Kentucky
Thos. Cody ..... Kentucky

John J. Craig ..... Kentucky
Alex. Davazac ..... Kentucky
Geo. Davidson ..... Kentucky
Laura Davis ..... Kentucky
John Delaney ..... Kentucky
Fred Degginger ..... Kentucky
Edgar De Coursey ..... Kentucky
Anna De Coursey ..... Kentucky
W. L. Dickson ..... Kentucky
J. M. Disque ..... Kentucky
Lawrence Dillon ..... Kentucky
H. N. Dine ..... Kentucky
F. W. Dressen ..... Kentucky
M. M. Donaghue ..... Kentucky
Chas. Brandstettner ..... Kentucky
Bannie Dugan ..... Kentucky
Mollie Dunne ..... Kentucky
Louise Egler ..... Kentucky
30/62 Rose Egler ..... Kentucky
Wm. Ernest ..... Kentucky
Elizabeth Ernest ..... Kentucky
Frank Flake ..... Kentucky
Mary Flake ..... Kentucky
John Finan ..... Kentucky
Wm. Finan ..... Kentucky
John Gallagher ..... Kentucky
Margaret Gallagher ..... Kentucky
Anna Gayner ..... Kentucky
W. H. Gormley ..... Kentucky
Ada Gormley ..... Kentucky
Jas. A. Graham ..... Kentucky
Robt. Green ..... Kentucky
Wm. Gillham ..... Kentucky
A. C. Heckman ..... Kentucky
W. E. Heckman ..... Kentucky
J. J. Hennessy ..... Kentucky
Alice Herr ..... Kentucky
C. C. Hill ..... Kentucky
J. S. Holmes ..... Kentucky
J. J. Hurley ..... Kentucky
H. Hutchinson ..... Kentucky
Fred Herzog ..... Kentucky
L. D. Jackson ..... Kentucky
George Jetter ..... Kentucky
R. W. Jones ..... Kentucky
Hugo Jonas ..... Kentucky
R. F. Johnson ..... Kentucky
Emily Johnson ..... Kentucky
Henry Kampe ..... Kentucky
Mary Ketner ..... Kentucky
Flora Ketner ..... Kentucky

Edward Ketner ..... Kentucky
Stacia Kelly ..... Kentucky
Geo. Koch ..... Kentucky
Robt. Kraut ..... Kentucky
Otillie Kraut ..... Kentucky
W. J. Kreis ..... Kentucky
F. J. Kochersperger ..... Kentucky
Wm. Koehler ..... Kentucky
Jos. Lalonde ..... Kentucky
Mary Lalonde ..... Kentucky
Harris Levi ..... Kentucky
R. F. Langhauser ..... Kentucky
Katie Lemcole ..... Kentucky
L. G. Long ..... Kentucky
John Lyons ..... Kentucky
30/63 Edward Lowe ..... Kentucky
John Mann ..... Kentucky
W. J. Mahon ..... Kentucky
W. J. Moran ..... Kentucky
T. J. Morgan ..... Kentucky
E. N. Miller ..... Kentucky
Anna Miller ..... Kentucky
J. Muggeridge ..... Kentucky
J. Murphy ..... Kentucky
Gus Menninger ..... Kentucky
Henry Mahan ..... Kentucky
Margaret McGilaway ..... Kentucky
Wm. McIntosh ..... Kentucky
J. J. McNavin ..... Kentucky
Carrie Schodinger ..... Kentucky
George Nie ..... Kentucky
Anna Noel ..... Kentucky
M. I. Percival ..... Kentucky
Harry Phillips ..... Kentucky
Harry Pruden ..... Kentucky
W. J. Pruden ..... Kentucky
Cynthia Patterson ..... Kentucky
Anna Ratchford ..... Kentucky
W. L.Regan ..... Kentucky
Marie Reed ..... Kentucky
Ben F. Reed ..... Kentucky
Owen Rees ..... Kentucky
Jas. H. Redmond ..... Kentucky
P. M. Rennebarth ..... Kentucky
Addie Rennebarth ..... Kentucky
Chas. C. Respess ..... Kentucky
F. B. Respess ..... Kentucky
A. P. Rose ..... Kentucky
Margaret Rogers ..... Kentucky
J. C. Rogers ..... Kentucky
Maude Raywood ..... Kentucky

	Lottie Rich	Kentucky
	Stanley Sawyer	Kentucky
	W. M. Semple	Kentucky
	Eliz. Schilds	Kentucky
	B. Schweinefuss	Kentucky
	Henry Schroeder	Kentucky
	E. N. Simpson	Kentucky
	B. B. Snodgrass	Kentucky
	Geo. Speaker	Kentucky
	Ida Speaker	Kentucky
	Jas. Stanfield	Kentucky
	Mary Steventon	Kentucky
30/64	Anna Stinsman	Kentucky
	Geo. Streibich	Kentucky
	Victoria Streibich	Kentucky
	J. J. Sullivan	Kentucky
	Roger Sullivan	Kentucky
	Endora Sheehan	Kentucky
	Jas. Turnbull	Kentucky
	B. Tepe	Kentucky
	Anna Tattershall	Kentucky
	Minnie Vander Voort	Kentucky
	Fred Wahle	Kentucky
	Mary Warrington	Kentucky
	L. L. Wilkie	Kentucky
	Stella Wilson	Kentucky
	A. C. Word	Kentucky
	E. N. Woods	Kentucky
	Harriett Woods	Kentucky
	C. B. Wolf	Kentucky
	Chas. Willett	Kentucky
	Mabel Wirth	Kentucky
	Jno. C. B. Yates	Kentucky
	Arthur F. Ross	Kentucky
	G. W. Perryman	Virginia
	F. E. Fries	Ohio
	J. W. Cook	Ohio
	Mrs. Kate Oberle	Louisiana
	C. J. Oberle	Louisiana
	E. C. F. Ernst	Pennsylvania
	John Burke	Ohio
	R. W. Rees	California
	H. F. Speckman	Canada
	C. A. Lieder	Ohio
	A. Kaffenberger	Ohio
	F. H. Bruggeman	Kentucky
	Chas. Thompson	Kentucky
	R. M. Magill	California
	Ella T. Bails	California
	Homer Magill	California
	L. B. Banks	Kentucky

John Stahl ..... Kentucky
John Kinstler ..... Ohio
F. W. Manter ..... Kentucky
Geo. Fries, Jr. ..... Ohio
Mary Kinstler ..... Ohio
Harry Bissel ..... Ohio
J. B. Klosterman ..... Ohio
Bernard H. Moss ..... Ohio
E. H. Winters ..... Ohio
30/65 G. D. Thorne ..... Ohio
W. A. Adams ..... Ohio
August Panhorst ..... Ohio
Geo. W. Divine ..... Ohio
J. S. Geisler ..... Missouri
Sophia Divine ..... Ohio
Patrick Donovan ..... Michigan
Henry Flammer ..... Ohio
Frank Kinney ..... Ohio
Henry Bissel ..... Ohio
Clara M. Lieder ..... Ohio
Henry A. Thompson ..... Ohio
Theo. H. Hoelscher ..... Ohio
Dolly M. Hoelscher ..... Ohio
Fred Bary ..... Kentucky
L. H. Scharstein ..... Kentucky
Wm. A. Youstey ..... Kentucky
D. J. Winston ..... Kentucky
W. H. Worner ..... Kentucky
L. B. Atkins ..... Kentucky
M. M. Ware ..... Kentucky
D. Miller ..... Kentucky
F. Miller ..... Kentucky
W. A. Schriver ..... Kentucky
F. H. Heitmeyer ..... Kentucky
Chas. McGovern ..... Kentucky
J. C. Merz ..... Kentucky
C. H. Kruse ..... Kentucky
Fred Albershart ..... Kentucky
Jona Schmidt ..... Kentucky
A. F. Zitt ..... Kentucky
Grant Johnson ..... Kentucky
John Mohler ..... Kentucky
H. C. Thompson ..... Kentucky
G. E. Morlidge ..... Kentucky
James M. Knight ..... Kentucky
E. F. E. Davis ..... Kentucky
B. H. Kaighn ..... Kentucky
H. C. Kordel ..... Kentucky
J. J. White ..... Kentucky
Jos. Vodde ..... Kentucky
M. Cottingham ..... Kentucky

A. J. Thorman ..... Kentucky
F. Binder ..... Kentucky
W. W. White ..... Kentucky
J. P. Lindsey ..... Kentucky
Clara E. Albershart ..... Kentucky
Jacob Weber ..... Kentucky
30/66 Jacob Aschenbach ..... Kentucky
F. Waldemeyer ..... Kentucky
H. F. Speckman, Jr. ..... Kentucky
E. M. Magill ..... Kentucky
A. W. Wiebe ..... Kentucky
Wm. Kraus, Jr. ..... Kentucky
J. C. Bucher ..... Kentucky
Walter Bennet ..... Kentucky
J. D. Jones ..... Kentucky
C. A. Smith ..... Kentucky
H. N. Smith ..... Kentucky
R. Matzner ..... Kentucky
C. E. Busher ..... Kentucky
C. W. Parker ..... Kentucky
M. A. Harris ..... Kentucky
A. M. Greule ..... Kentucky
W. F. McClure ..... Kentucky
F. Jones ..... Kentucky
J. W. Davis ..... Kentucky
F. Listerman ..... Kentucky
M. L. Appelgate ..... Kentucky
Dasie Lindsey ..... Kentucky
S. A. H. Wiebe ..... Kentucky
M. E. Murry ..... Kentucky
A. L. Schnake ..... Kentucky
Wm. Sauer ..... Kentucky
F. J. Maddox ..... Kentucky
H. B. Myers ..... Kentucky
T. E. King ..... Kentucky
G. Wittman ..... Kentucky
C. W. Berger ..... Kentucky
M. O. Marsh ..... Kentucky
H. A. Speckman ..... Kentucky
J. G. Jones ..... Kentucky
R. W. Martin ..... Kentucky
E. L. Heyne ..... Kentucky
M. A. Simms ..... Kentucky
H. R. Irwin ..... Kentucky
M. A. Horner ..... Kentucky
J. H. Davis ..... Kentucky
J. H. White ..... Kentucky
C. Bloessing ..... Kentucky
F. Bloessing ..... Kentucky
Alma Speckman ..... Kentucky
Barton A. Schiffer ..... Kentucky

W. H. Weber ..... Kentucky
Maggie Knox ..... Kentucky
W. H. Stembel ..... Kentucky

30/67

J. W. Sensel ..... Kentucky
John Miller ..... Kentucky
Louisa E. Miller ..... Kentucky
R. H. Pyne ..... Kentucky
H. W. Root ..... Kentucky
C. E. Thompson ..... Kentucky
R. A. Stembel ..... Kentucky
L. G. Kraus ..... Kentucky
Jacob Goetz ..... Kentucky
Alfred Craddock ..... Kentucky
Clara C. Grau ..... Kentucky
J. B. Hunter ..... Kentucky
Anna S. Swieher ..... Kentucky
Adam Grimm ..... Kentucky
J. F. Kriemer ..... Kentucky
Viola Groesch ..... Kentucky
R. Arnold ..... Kentucky
John Zweckbroner ..... Kentucky
J. P. Bechtold ..... Kentucky
W. H. Kennedy ..... Kentucky
T. J. Perry ..... Kentucky
Irene Scharstine ..... Kentucky
Ed. Lohstroh ..... Kentucky
F. Crensere ..... Kentucky
W. S. Thompson ..... Kentucky
Elizabeth Huber ..... Kentucky
Annie May Huber ..... Kentucky
F. C. Bahr ..... Kentucky
G. G. Waite ..... Kentucky
M. M. Waite ..... Kentucky
E. L. Bissell ..... Kentucky
R. J. Donovan ..... Kentucky
S. E. Owens ..... Kentucky
F. H. Hehman ..... Kentucky
Eva Perry ..... Kentucky
Adam Zeigler ..... Kentucky
A. E. Swischer ..... Kentucky
Bertha Schneider ..... Kentucky
J. M. Digby ..... Kentucky
Theo. Relay ..... Kentucky
R. A. Miller ..... Kentucky
Hugo Traub ..... Kentucky
C. H. Kelly ..... Kentucky
Chas. Ehler ..... Kentucky
Josephine Wittman ..... Kentucky
Frank Gilb ..... Kentucky

W. A. Walker ..... Kentucky
W. J. Walsh ..... Kentucky

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J. H. Torrey ..... Kentucky
Mary A. Geiss ..... Kentucky
H. A. Thomas ..... Kentucky
Geo. J. Wingester ..... Kentucky
O. B. Huber ..... Kentucky
John Regnath ..... Kentucky
Christina Schiebly ..... Kentucky
P. H. Oldenburg ..... Kentucky
A. W. Buchtman ..... Kentucky
Mathew Marsh ..... Kentucky
Elizabeth Marsh ..... Kentucky
Theresa Stevens ..... Kentucky
O. M. Russel ..... Kentucky
A. M. Rummel ..... Kentucky
Rosa Craddock ..... Kentucky
E. Lender ..... Kentucky
Wm. M. Miller ..... Kentucky
D. N. McCarley ..... Kentucky
Peter Taha ..... Kentucky
Jas. H. Hurd ..... Kentucky
M. L. Zitt ..... Kentucky
W. E. James ..... Kentucky
Wm. Johnson ..... Kentucky
W. F. Schaber ..... Kentucky
Chas. D. Grau ..... Kentucky
B. R. Marshall ..... Kentucky
J. L. McGee ..... Kentucky
W. F. Muir ..... Kentucky
T. Wahlen ..... Kentucky
Rosie Wiehe ..... Kentucky
John Faha ..... Kentucky
Anna Banderman ..... Kentucky
John Schweitzer ..... Kentucky
L. W. Hughes ..... Kentucky
C. M. Williams ..... Kentucky
Oscar Hughes ..... Kentucky
Nellie Walsh ..... Kentucky
S. Huber, Jr. ..... Kentucky
Elizabeth Williams ..... Kentucky
Anna C. Bucher ..... Kentucky
C. W. Edwards ..... Kentucky
Julia Weber ..... Kentucky
Rosien Biehl ..... Kentucky
Lambert Rigler ..... Kentucky
Wm. F. Stevens ..... Kentucky
Mary Bissell ..... Kentucky
Amanda B. Ross ..... Kentucky

	J. W. Mealy	Kentucky
30/69	Peter Wingerter	Kentucky
	Emma King	Ohio
	George Cole	Kentucky
	Charles Whitney	Tennessee
	George Collier	Ohio
	May C. Black	Ohio
	Charles Fischer	Ohio
	Ella Hughes	Ohio
	Blanch Hilton	Ohio
	Emma Kleespies	Ohio
	Jessie Giffin	Ohio
	Lena Lazlerick	Ohio
	Elizabeth Liddell	Ohio
	Wm. Liddell	Ohio
	J. C. Myres	Ohio
	Bartley Myres	Ohio
	Alice Myres	Ohio
	Jennie Myres	Ohio
	Eva Myres	Ohio
	Dr. E. R. McGrath	Ohio
	Louis Taylor	Ohio
	John Wollner	Ohio
	Kate Barnes	Ohio
	Sidney Banard	Ohio
	Charles Lubrman	Ohio
	Henry Lubrman	Ohio

That each and every of said plaintiffs holds a beneficial certificate or contract of insurance issued to him or her by said The Supreme Tribe of Ben-Hur, prior to June 1st, 1908, and held such certificate at the date the bill of complaint herein was filed, and at all times since except as is hereinafter stated; and that each of said plaintiffs belonged at the date the bill of complaint was filed herein to that class of the members of said Supreme Tribe of Ben-Hur and still so belongs except as hereinafter is stated; namely, Class "A."

That the complainants, Laura H. Meyers, Charles W. Mittendorf, Emma B. Mittendorf, Albert C. Mittendorf, Charles Steffens, J. M. Birsinger, M. A. Brawley, Edith A. Brawley, William Sauer, Sutton B. Dodds, L. P. Vander Voort, Nellie Alberts, Edgar De Coursey, Anna De Coursey, E. W. Flemming, William Finan, Ada Gormley, R. W. Jones, Daisy O. Jones, Hugo Jonas, Henry Kampe, Stacia Kelly, William Koehler, Joseph Lalonde, Mary Lalonde,
30/70 George Nie, Cynthia Patterson, Margaret Rogers, Jennie Roesch, Carrie Shoedinger, George Speaker, Ida Speaker, Anna Stinsman, Minnie Vander Voort, Fred Wahle, F. A. Zweifel, Henry Speckman, Alma Speckman, Walter Bennet, Emma King and Blanch Hilton have since this bill of complaint was filed voluntarily transferred from Class A of said defendant Supreme Tribe of Ben-Hur to Class B thereof (hereinafter more fully described) and have ceased to be members and are not now members of said Class A.

That since the filing of the bill of complaint, the complainant, John Mutz, has ceased to be a member in good standing of Class A.

That complainants, Hazel Burke, William Christophel, Martha Christophel, Molly Dunne, Martin Duke, W. H. Gormley, Robert Green, B. Y. Jacobs, Garnet Jacobs, R. F. Langhauser, John Mandre, Ida McClure, W. L. Regan, Ben F. Reed, Ernest Roesch, Margaret Westcott, Leonard Westcott, and Charles Whitney have since this bill of complaint was filed been suspended from membership in Class A of said Supreme Tribe of Ben-Hur for the non-payment of dues, and none of said complainants has ever been re-instated in accordance with the laws of said order, and that none of said complainants above mentioned is now a member of the Supreme Tribe of Ben-Hur but that all of said complainants have ceased to be and no longer are members of said defendant society.

That since the filing of the bill of complaint herein the complainant, Patrick Donovan, has died.

The evidence fails to disclose that any of the complainants other than those whose names are set out in this finding were at the time the bill of complaint in this case was filed, ever had been or are now members in good standing in Class A of the defendant, Supreme Tribe of Ben-Hur.

II.

That said defendant, The Supreme Tribe of Ben-Hur, was at the time said bill of complaint was filed, ever since has been and now is a corporation organized and existing under the laws of the State of Indiana and having its principal place of business within
30/71 said State of Indiana, and during all of said time has been and is a citizen and resident of said State of Indiana; that is to say, said The Supreme Tribe of Ben-Hur was on the 8th day of January, 1894, organized as a corporation under the laws of said State of Indiana and thereafter, to-wit; on the 20th day of February, 1900, said defendant, Supreme Tribe of Ben-Hur, was reincorporated under and pursuant to the statutes of the State of Indiana, and ever since its original organization has been and now is a fraternal beneficiary association organized for the purpose of conducting a fraternal beneficiary society in said State under the laws thereof and elsewhere, and conducting the business of such fraternal beneficiary society and having by virtue of the laws of said State of Indiana the right to sue and be sued and the right to contract and be contracted with.

That said defendant at no time during the period of its original organization nor since its re-organization has ever been conducted for profit but that during the entire period of its existence it has possessed a lodge system consisting of subordinate organizations known as "courts" and a ritualistic form of work, and has during all of said time had and maintained a representative form of government and been conducted during said entire period of its existence for the sole and exclusive benefit of its members and their beneficiaries and not for profit, and has made provision during all of said time for the payment of benefits in case of death to the beneficiaries

of deceased members, such beneficiaries being the families, heirs, blood relatives, affianced husbands, affianced wives of or to persons dependent upon such members as applied for and received contracts of insurance, and who were and are known as beneficial members as distinguished from members who do not hold contracts of insurance, of whom there are a comparatively small number, and such last mentioned members are known as social members.

That during said entire period of its existence, both under its original form and as at present organized, said defendant has been authorized by Statute to adopt by-laws, rules and regulations to govern its business, and that such by-laws, rules and regulations as they existed at the time said respective contracts of insurance or beneficial certificates were issued to members of said order
30/72 including the complainants by said corporation and any amendments thereafter adopted were by the terms of each and every one of said respective contracts of insurance or beneficial certificates so issued by said defendant made a part of said respective contracts of insurance or beneficial certificates.

That the benefits of the system of insurance established and conducted by said defendant, Supreme Tribe of Ben-Hur, have always been and are now confined to members of the Order in good standing in a subordinate lodge or court of the Society, and that never at any time during the period of its existence has said defendant, The Supreme Tribe of Ben-Hur, issued or been authorized to issue capital stock.

That each of the defendants, other than said The Supreme Tribe of Ben-Hur, was at the time said bill of complaint was filed, ever since has been and now is a resident and citizen of the State of Indiana, and that during all of said time said respective defendants, other than said The Supreme Tribe of Ben-Hur, have held official positions in and with respect to said defendant, Supreme Tribe of Ben-Hur, as follows; to-wit: Royal H. Gerard, Supreme Chief or President; John S. Snyder, Supreme Scribe or Secretary; S. E. Voris, Supreme Keeper of Tribute, or Treasurer; J. F. Davidson, Supreme Medical Examiner; that the foregoing officers together with the defendants, G. H. Hazen and J. R. Bonnell and one Edward R. Bryson have during all of said time constituted and now constitute the Executive Committee of said defendant, Supreme Tribe of Ben-Hur.

III.

That the jurisdiction of said Supreme Tribe of Ben-Hur is and always has been co-extensive with the territorial limits of the United States; that said defendant, The Supreme Tribe of Ben-Hur, has always been and now is the supreme governing body of the respective lodges established within said jurisdiction throughout the United States, which are and always have been, respectively, maintained and known as "Court of the Tribe of Ben-Hur," each of which courts is subordinate to said Supreme Tribe of Ben-Hur.

30/73 That the supreme legislative body of said defendant is known as the "Supreme Session" and consists and always has

consisted of representatives from said various courts, which are grouped for the purpose of representation in accordance with the laws of said society into districts; that said Supreme Session is and always has been assembled according to the laws of said defendant, Supreme Tribe of Ben-Hur, at its headquarters or seat of government at the City of Crawfordsville, Montgomery County, Indiana, in regular biennial conventions or meetings.

IV.

That the number of members of Class A on the third Monday of May, 1908, the date of the convening of the biennial convention in that year was approximately 100,000; the certificates issued to said Class A members were not all literally the same and they were distinguished from each other as Schedule 1, Schedule 2, Schedule 3 and Schedule 4, with reference to date of issuance, the oldest certificates being designated as Schedule 1.

That at the time the bill of complaint was filed there were more than seventy thousand members in said Class A; that on November 1st, 1913, there were over forty thousand members in Class A; that it is and at all times since the filing of said bill of complaint has been impracticable to join all of said Class A members as parties hereto; that the questions involved herein are of common and general interest to each and every member of said Class A.

V.

That the matter in controversy herein exceeds, exclusive of interest and costs, the sum of three thousand dollars; and that the accounts pertaining to the receipt, apportionment, transferring and expenditure of money paid to said corporate defendant by the members of Class A are extremely involved and complicated and extend over a great many years.

VI.

That by Section 15 of the Articles of Re-incorporation of said Supreme Tribe of Ben-Hur, it is provided:

30/74 "The fund or funds from which the expenses of this association may be defrayed shall be derived from assessments or per capita tax collected from its members in accordance with the terms of its by-laws."

And that by Section 3 of said Articles of Re-incorporation, it is provided:

"The business and prudential concerns of the order shall be managed and its property controlled under such rules and regulations as have been or may hereafter be legally adopted by the following officers, namely, a past supreme chief, a supreme chief, a supreme judge, a supreme teacher, a supreme scribe, a supreme keeper of tribute, a supreme captain, a supreme guide, a supreme medical examiner, a

supreme keeper of the inner gate, a supreme keeper of outer gate, and a board to be known as the "Tribune," to be composed of not less than five nor more than seventeen members * * *."

That by Section 5 of said Articles of Re-incorporation it is provided that:

"The Executive Committee hereinafter provided for shall have exclusive power to adopt, amend, repeal, promulgate and enforce all rules and regulations pertaining (1) to the amount of death or disability benefits that may be provided or agreed to be paid to members, (2) to the rate of premium, monthly payment or dues to be paid by such members * * *. All such acts of the Executive Committee may be revised, approved or rejected at any regular meeting of the Supreme Tribe of Ben-Hur."

That by Section 7 of said Articles of Re-incorporation, it is provided that:

"The Executive Committee, which shall have full charge and control of the business and prudential affairs of the association, shall be composed of a supreme chief, supreme scribe, supreme keeper of tribute, supreme medical examiner, and three other members of the Supreme Tribe of Ben-Hur to be elected as the other officers are selected."

30/75 That by the statutes of the State of Indiana under which said defendant corporation was organized, it is provided that:

"The fund from which the expenses of such association shall be defrayed shall be derived from assessments or dues collected from its members."

And it is also provided, Sec. 2:

"* * * The by-laws of every such association shall also clearly state what part, if any, of each assessment may be used for expenses, and no other part may be used for any purpose whatever other than the payment of losses * * *."

That by Section 16 of said Articles of Re-incorporation, it is provided that:

"Section 16: The Supreme Tribe shall have the power to adopt by-laws for the government of itself and subordinate and other courts, not in conflict with the provisions of the articles of association, and to promulgate and enforce the same by the adoption and enforcement of suitable penalties which penalties shall not be unusual or extreme in character. All laws, rules and regulations of the Supreme Tribe may be adopted, amended or repealed by a majority vote of all members present and voting at any session of the Supreme Tribe, as provided by the laws, rules and regulations of the order."

That each benefit certificate issued by said defendant, Supreme Tribe of Ben-Hur, prior to July 15th, 1899, contained among other things the following provision:

"This certificate is issued subject to and to be construed and controlled by the laws, rules and regulations of the order."

That each benefit certificate issued by said defendant, Supreme Tribe of Ben-Hur, from July 15th, 1899, to and including the 9th day of April, 1905, contained the following provision:

"This certificate is issued subject to and to be construed and controlled by the laws, rules and regulations of the order now
30/76 in force or which may hereafter be adopted."

That each benefit certificate issued by said defendant, Supreme Tribe of Ben-Hur from April 10th, 1905, to September 30th, 1906, contained a provision agreeing to pay a definite amount to a named beneficiary:

"in accordance with the laws, rules and regulations of the Supreme Tribe of Ben-Hur, as the same exist or may be hereafter modified, changed, amended or enacted * * *."

"This certificate and said beneficial fund and the amount of monthly payments and assessments which may be made are each and all subject to be construed, administered and controlled by the laws, rules and regulations of the Supreme Tribe of Ben-Hur as they now exist or may hereafter be changed, altered or enacted, and it is understood that additional assessments may be made to maintain said benefit fund. This certificate is issued in consideration of the warranty waivers and agreements made by said member in this certificate in his application to become a member of this association and of his agreement to comply with all the laws, rules and regulations of the order as they now exist or may hereafter be changed, altered, amended or enacted, and in consideration of his agreement to pay the monthly payments and assessments and dues according to the laws, rules and regulations of the Supreme Tribe of Ben-Hur as they now exist or may hereafter be changed, altered, amended or enacted."

That each benefit certificate issued by said Supreme Tribe of Ben-Hur from October 1st, 1906, to June 1st, 1908, contained the following provision:

"In consideration of the statements, conditions, agreements and warranties made in the application for this certificate of beneficiary membership and the statements made to the local medical examiner and incorporated in and subscribed to said application, and in consideration that said statements, conditions, agreements and warranties are full, true, and complete and are material and not evasive, and upon the further agreement on the part of the applicant
30/77 to be bound by the laws, rules and regulations of the Supreme Tribe of Ben-Hur as they are now in force or may hereafter be amended, changed or modified, and that applicant, hereinafter called member, shall make prompt payment of all monthly payments, dues, additional assessments that may be called, per capita tax fines and demands, as provided for in the said laws, rules and regulations, which laws, together with the said application in this

certificate, shall constitute the contract between said Supreme Tribe of Ben-Tur and his beneficiary * * *."

VII.

That at its 1908 biennial meeting said Supreme Session of said defendant, Supreme Tribe of Ben-Hur, sitting in May of that year, enacted a law creating what have since been known as "Classes A and B" of said beneficial membership of said Supreme Tribe of Ben-Hur, providing and declaring that all certificates issued prior to July 1st, 1908, should be thereafter known as "Class A Certificates" and all certificates written on or after July 1st, 1908, should be "Class B Certificates"; and further providing a system and method by which beneficial members holding Class A certificates could surrender their Class A certificates and receive Class B certificates in lieu thereof.

That since the 30th day of June, 1908, no Class A certificates have in fact been issued by said defendant, Supreme Tribe of Ben-Hur.

VIII.

That the rates of insurance adopted and in force prior to July 1st, 1908, were grossly inadequate and insufficient to provide for the payment of death losses occurring and thereafter to occur among the beneficial members of said order holding beneficial certificates therein and entitled to protection in accordance with the provisions of their respective certificates and within a few years thereafter the reserve fund then on hand would have become exhausted if provision had not been promptly made for the relief of the financial condition then existing, all of which facts heretofore stated in this paragraph became apparent to the Supreme officers and members of the Executive Committee of the Supreme Tribe of Ben-Hur and many of the members of said Tribe of Ben-Hur in the summer of 1906.

30/78

Thereupon said Supreme Officers of said defendant, Supreme Tribe of Ben-Hur, consulted skilled and experienced actuaries familiar with the history and operation of fraternal beneficiary societies throughout the United States and elsewhere and requested said actuaries to devise and submit a plan for the relief of said existing financial condition; and that from time to time thereafter said supreme officers consulted with representative members of said order throughout the country in connection with actuaries and experts in such affairs, seeking and attempting for a period of two years thereafter to mature and perfect a plan which would best meet the interests of said organization with the least disturbance and burden to its membership.

That with the aid of expert opinions so obtained, together with the advice of and assistance of representative members of said order throughout the United States, said supreme officers caused to be prepared and submitted to the Supreme Session of said defendant, Supreme Tribe of Ben-Hur, at its May meeting in 1908, the plan then adopted and more fully described hereafter, including the installation

of said Class B and the designation of the then existing membership as Class A.

That at said Supreme Session so convened and sitting in May, 1908, every representative district of said Tribe of Ben-Hur was fully and fairly represented, the entire number of delegates to which said respective district were entitled under the laws of said organization being present thereat.

That at the time said Supreme Session convened in May, 1908, and theretofore, it was generally known to the representatives of said order there assembled and very largely known among the members thereof throughout the country that unless some practicable and feasible means could at once be provided for the relief of the beneficial members of said Supreme Tribe of Ben-Hur, said entire organization would very soon be unable to pay its mortuary obligations as they matured and would rapidly disintegrate and ultimately disband, leaving no protection whatever for the members who would survive for any considerable period of time; that during said Supreme Session there was general discussion among the representatives present touching the merits of said plan so proposed and full and free opportunity given to criticise said plan and for amendments thereto; and that after full discussion, criticism, explanation and consideration thereof, the plan so devised and submitted to said Supreme Session was unanimously adopted, which plan so adopted included as its principal features the creation of a new class of certificate holders to be thereafter known and designated as "Class B" as distinguished from the then beneficial members of said order to be thereafter known as "Class A."

30/79

That under the provisions of said plan so devised and adopted members of said Class A became eligible to transfer to and become members of Class B without medical re-examination and at the ages at which they became members of said organization without cost of transfer, and that as a part of said plan so adopted adequate rates of insurance based upon what is known as the National Fraternal Congress Mortality Tables with a four per cent interest assumption and with certain additions or loading for expenses, were provided to be paid by persons who should thereafter become members of Class B, whereas the rates of insurance theretofore in force for the then beneficial membership of said Supreme Tribe of Ben-Hur thereafter to be known as Class A remained the same.

That as a part of said plan it was provided that the mortuary funds of said two classes should be kept separate and distinct from each other except that the gains from forfeitures by lapses, interest earnings and savings from mortality in Class B, as determined by an annual valuation, might be transferred to other funds designated by the Executive Committee except the expense or general fund to be used for the common advantage of all members holding certificates in Class A and Class B who are in good standing at the date of the transfer.

That as a part of the general plan so devised and adopted it was provided that all of the expenses of said Supreme Tribe of Ben-Hur, including the expenses of both Class A and Class B, should be

30/80 paid out of a common or general expense fund to be known and designated as the general fund; that said general fund was under said plan to be composed of the money on hand for expense purposes at the time said Class B commenced operations (which money was then known as the general fund) and all future contributions of the beneficial members of said society for expense purposes.

That by Section 24 of the constitution, laws, rules and regulations adopted by The Supreme Tribe of Ben-Hur at said Supreme Session of 1908, it was provided among other things that the Executive Committee should set aside for expenses five per cent of all monthly payments or assessments received from members in Class A and that such Executive Committee should set aside for expenses sixty cents per month for the first twelve months on each one thousand dollars of insurance in force in Class B and in addition thereto for expense purposes ten per cent of all monthly payments and assessments from members in Class B; that it was further provided by Section 25 of said constitution, laws, rules and regulations adopted at said Supreme Session of 1908 that the Executive Committee should have power to set aside and place to the credit of the general fund to be used for expense purposes the first six monthly payments on all beneficial certificates issued to members in Class A of said society; that each member of Class A should pay a per capita tax of one dollar and fifty cents ($1.50) per annum, payable in equal semi-annual installments, which per capita tax was under said plan to be paid into and form a part of the general or expense fund of said defendant society, and that said Class A members have been required to pay and have regularly paid since the installation of Class B, a per capita tax ranging from one dollar ($1.00) to one dollar and fifty cents ($1.50) per annum for expense purposes; that no per capita tax was required to be paid by said legislation by the members of Class B.

IX.

That by a law of said Supreme Tribe of Ben-Hur, effective May 8th, 1899, it was provided that the moneys derived from the monthly payments of members should be known as the Benefit Fund, except

30/81 fifteen per cent (15) thereof, two-thirds of which fifteen per cent (15) it was provided should be set aside and known as the reserve or emergency fund, to be used to pay death claims and disability benefits, and that one-third of said fifteen per cent (15) should be used for expense purposes.

That by Sections 24 and 25 of the laws enacted at the 1900 Supreme Session of said Supreme Tribe of Ben-Hur it was further provided that of the sums derived from monthly payments of members of said order eighty-five (85) per cent should go to constitute the benefit fund, ten per cent (10) to the reserve or emergency fund, and five per cent (5) to the general or expense fund; and that the Executive Committee should have the power to set aside and place to the credit of the general fund (expense fund) the first six monthly payments of members except the ten per cent (10) which was required

at all times to be placed in the emergency fund, so that in the discretion of the Executive Committee during the first six months ninety per cent (90) of the members' payments could be paid into the general or expense fund and ten per cent (10) into the emergency fund and nothing into the benefit fund, which provisions of said legislation of 1900 have ever since remained in force without material change.

Said Master further finds that said defendant Supreme Tribe of Ben-Hur, by its proper officers has used five per cent (5) of the sums so collected from said periodical or monthly payments of all members other than Class B members, after its creation, as and for the general expenses of said corporation ever since the 20th day of February, 1900, and that from and during the years 1900 to 1908, inclusive, it has used in addition to the five per cent (5) above referred to, certain funds derived from said eighty-five per cent (85) which would otherwise have been paid into the benefit fund from the first six monthly payments of new members as provided by the legislation of said order during that time in force, or such portions of said eighty-five per cent (85) as were from time to time found by said Executive Committee to be necessary for expense purposes and set aside therefor.

That of said sum so carried to said general or expense fund from said first six monthly payments of said new members, the sum of Twenty-seven Thousand Eight Hundred Forty and 30/82 46-100 dollars ($27,840.46) was in the year 1903 found to be unnecessary for the payment of the expenses of said order and was thereupon transferred to and became a part of said benefit fund.

That for the years beginning July 15, 1908, and ending April 15th, 1913, there was carried into the general or expense fund from the monthly payments made by members of Class A the sum of Two Hundred Fifty-four Thousand Eight Hundred Nine and 73-100 Dollars ($254,809.73) including five per cent (5) of the total monthly payments of members of Class A during said period.

Said Master further finds that at no time has said Supreme Tribe of Ben-Hur by its officers, Executive Committee or otherwise used or permitted to be used for expense purposes or credited to said general or expense fund any portion of the contributions of members of Class A in excess of said five per cent (5) and of such appropriations as were made from time to time of said first six monthly payments of new members, not exceeding at any time the maximum amount authorized by the laws of said order then in force.

That members of Class B, as provided by said legislation of 1908 from July 1st, 1908, to July 15th, 1912, contributed to the general fund for expense purposes sixty cents ($.60) per month for the first twelve months of the membership of each member of Class B on each one thousand dollars of the insurance carried by such member and that since July 15th, 1912, as duly provided by legislation of that year, eighty per cent (80) of the first twelve monthly payments of Class B members has been carried to said general or expense fund and applied in payment of general expenses; and in addition thereto, ten

per cent (10) of each monthly payment and assessment of such member, after the first year of such membership, from the time of the organization of Class B to the present time.

That said general or expense fund has received during the period beginning July 15th, 1908, and ending April 15, 1913, accretions in addition to those heretofore stated, from the sources and in the respective amounts following, to-wit:

30/83 From fees for medical examination of Class B members	$506.61
From membership fees of Class A members	5,813.99
From membership fees of Class B members	1,744.76
Total	$7,558.75

That the general or expense fund of said defendant, Supreme Tribe of Ben-Hur, consisted on July 15th, 1908, of a balance of Eighty-three Thousand, Four Hundred Thirty Seven and 85-100 Dollars ($83,437.85), and that no contributions or additions thereto have been made from any sources whatever since said date except as stated in these findings and income derived from the investment of the same.

X.

That the rates of insurance so provided and established by said legislation of 1908 for members receiving Class B certificates while adequate as aforesaid, were not excessive nor unreasonable but were fair and reasonable, as shown by the mortality experience of fraternal beneficiary societies in general and by the previous experience and history of said Supreme Tribe of Ben-Hur, and were based upon the tables of mortality generally used by Fraternal beneficiary societies known as the "National Fraternal Congress Tables of Mortality" with a four per cent. interest assumption.

XI.

That the legislation of 1908 so adopted continued in force without material change until June 1st, 1912, during which period the affairs of said Supreme Tribe of Ben-Hur were administered in accordance therewith; but that on June 1st, 1912, there was in force a law of said organization providing that members of said order might transfer from Class A to Class B without medical re-examination and without cost of transfer at from three to four years less than the attained ages of such members, except members above the age of fifty-five years, who were permitted during said period to transfer as of the age of fifty-five years, which law remained in force until July 1st, 1913, when a provision of said laws became
30/84 effective permitting such members to transfer without medical re-examination and without cost of transfer at their then attained age except members who were then fif-y-five years of age or more, who have been since said last mentioned date

permitted by said provision to transfer as of the age of fifty-five years, which last mentioned act or law is still in force.

That during said respective periods all members desiring to transfer have in fact been permitted to do so upon the conditions named in said respective provisions.

XII.

Said Master further finds that immediately upon the adoption of said legislation of 1908 and thereafter from time to time as changes were made therein or in the method of administering said plan so embodied therein, said Supreme Tribe of Ben-Hur through its said officers and Executive Committee caused to be published and circulated among all the members of said organization, including complainants in this cause, full and accurate information concerning said plan so adopted; and that for a period of approximately four and one-half years after said Supreme Session of 1908 said entire membership of said organization including said plaintiffs had full knowledge of the plan so adopted and the purposes and necessities thereof, as set forth in these findings, and during all of said period received the insurance protection of their respective contracts, the security of which was materially enhanced by the installation of said Class B and the system of transfers so established together with the practical operation of said plan during said period, and participated during all of said period in all the benefits and advantages of said organization so strengthened and improved by the creation of said Class B and the legislation incident thereto, with full opportunity to obtain knowledge of the fact that said legislation provided for the maintenance of a general or common expense fund, as set forth in these findings, with the privilege to transfer from Class A to Class B upon the conditions herein mentioned and also with full opportunity to obtain knowledge that said expense fund was maintained in part by the used of five per cent. of the monthly payments of said Class A members for expense purposes, and in part by the contributions of Class B members
30/85 as herein stated, but the membership of the society did not contain many persons who had an acquaintance with the life insurance business or who had a business experience of any kind, and the evidence does not show that any of the plaintiffs had an understanding in detail or even in general of the financial operations of the Supreme Tribe of Ben-Hur or of the appropriation and disbursement of the funds of that society from June, 1908, down to the time of the filing of the bill of complaint herein; that at no time during said period of ap-roximately four and one-half years from and after said Supreme Session of 1908 was any objection or protest made to said legislation of 1908 or to any feature or provision thereof nor to said manner in which said plan so embodied therein was being administered.

That during said period of approximately four and one-half years from and after said Supreme Session of 1908 said defendant, Supreme Tribe of Ben-Hur, through its proper officers and agents has caused to be set aside for the maintenance of said common ex-

pense fund so known as the general fund and to become a part thereof the contributions of said Class A members for expense purposes, as in these findings particularly set forth, together with all contributions made and required to be made by said Class B members for expense purposes from monthly payments and per capita tax, amounting to Eight Hundred thirty-five thousand, three hundred dollars and twenty cents ($835,300.20) so contributed by Class A members, and Four Hundred and Sixty-Seven Thousand Four Hundred and Six Dollars and sixty-six cents ($467,406.66), so contributed by said Class B members; and that during said period and before any of said plaintiffs or any other members of said organization offered any protest or objection to said legislation or the administration of said order thereunder, there had been paid out of said general fund for legitimate and proper expenses of said organization a sum aggregating One Million Four Hundred Thousand, and Sixty-five Dollars and sixteen cents ($1,400,065.16).

XIII.

Said Master further finds and reports to the Court that in the creation of said Class B and in the establishment and pro-
30/86 mulgation of said rates of insurance so applied thereto and said system of transfers from said Class A to Class B said defendant, Supreme Tribe of Ben-Hur, and its officers and executive Committee, including each of the individual defendants herein, acted in entire good faith and with the sole desire and purpose of protecting the entire membership of said Tribe of Ben-Hur, including complainants, in what seemed to said defendant and to its officers and Executive Committee, as aforesaid, to be and which said Master finds was the only practicable known method of relieving said organization from existing financial embarrassment and probably dismemberment and disintegration in the near future.

That all representations and inducements made and held out to the members of said Tribe of Ben-Hur respecting said plan or system and the advisability and advantages of transferring to said Class B and all expenditures made by said defendant in furtherance of said plan and in carrying out the same were made and expended in good faith by said defendant, Supreme Tribe of Ben-Hur, and by its officers, agents and employes, including the other defendants herein, for the purpose of preventing the dissolution and dismemberment of said organization on account of its then heavy liability and approaching inability to meet its mortuary expenses, all of which expenditures were made necessary by the financially embarrassed condition of said beneficial membership known, after July 1st, 1908, as Class A and were made for the benefit of said Class A members; and that all of said representations so made were in fact true.

Said Master further finds that it was and would have been impracticable for said defendant, Supreme Tribe of Ben-Hur, and its officers and Executive Committee, to have provided a sufficient fund to meet its then present and future mortuary liabilities to its members, thereafter known as and constituting Class A, through what

is known as the Special Assessment Plan or by increase of existing rates of insurance applicable to all persons then members of said organization; that if the plan so adopted and promulgated by said defendant, Supreme Tribe of Ben-Hur, embodying the creation of said Class B and providing for transfers thereto, as aforesaid, under conditions including reasonable and adequate rates of in-
30/87 surance for said Class B members had not been adopted and carried out substantially as above described, said Tribe of Ben-Hur, consisting at that time exclusively of members thereafter known as Class A members, would have been unable to maintain itself so as to meet its mortuary obligations for more than a very few years, when it would have become necessary to levy and collect such frequent special assessments as would have resulted in the dismemberment and destruction of said beneficial insurance society.

Said Master further finds that said plan so devised, adopted and carried out, including the creation of said Class B and system of transfers thereto from said Class A, has in all respects resulted beneficially not only to said organization as a whole but also to the members of Class A who have not transferred to Class B. That at the time said plan was adopted the per capita interest of the members of said organization in the mortuary fund thereof (consisting of the benefit and emergency funds) amount- to Ten and 99-100 Dollars ($10.99), the per capita interest of the members of said Class A had on the 15th day of April, 1913, increased to approximately Seventeen and 37-100 Dollars ($17.37) and that, as shown by the experience of like societies under similar conditions, the per capita interest in said funds of those who elect to continue as members of Class A will still further increase and the protection of said members will be further enhanced. This increase has come from four sources; first, interest accretions; second, gain from forfeiture by lapse; third, gain by death; fourth, gain of the shares of members who have transferred to Class B.

XIV.

Said Master further finds that it was at the time complainants' bill of complaint was filed and still is the intention of the defendants to continue in the future to use for the general expenses of said defendant, Supreme Tribe of Ben-Hur, five per cent of the periodical or monthly payments of the members of Class A or such part thereof as may be required in the prudent and economical administration of the affairs of said Order and as duly authorized by the laws thereof, but not otherwise.

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XIV.

That at all times since the organization of said Supreme Tribe of Ben-Hur its necessary and legitimate expenses have largely exceeded any sum that has ever been raised or could lawfully have been raised by a per capita tax, and that it would be unjust and inequitable to provide for the entire expenses of said Order by a per capita tax, even

if otherwise practicable, in this, to-wit: that the amount of benefits agreed to be paid to beneficiaries of the various members under their respective certificates or contracts of insurance vary from Two Hundred and Fifty Dollars each to Three Thousand Dollars and a per capita tax sufficient to provide for all expense would result in equalizing the burdens of all members without reference to the amount of benefits provided for by their respective contracts of insurance, whereas, said Master finds that the burdens so imposed should be, as they are, in fact, imposed with due regard to the relative benefits conferred; and that the per capita tax heretofore and now exacted is reasonable, adequate and not unreasonable or excessive as representing the benefits which the members contributing the same equally enjoy.

That the only funds that have ever been available for the payment of general expenses have been such as were derived from said monthly payments, per capita tax and other small items set forth in these findings, and that said general expenses always have been so paid in the manner particularly set forth in these findings with the full knowledge and acquiescence of all the members of said order, including the members of Class A and including the complainants in this cause.

XVI.

That in the articles of re-incorporation of said Supreme Tribe of Ben-Hur and in the laws and literature thereto and in all proceedings of defendants and in the Statutes of Indiana under which said Supreme Tribe of Ben-Hur was reincorporated, and in the administration of said defendant's affairs and in the general administration of said Statute the term "assessments" has been un-formaly used and employed by the administrative officers of the State of In-
30/89 diana and by said defendant's administrative officers in the sense of "monthly payments" or "dues" and as synonymous and interchangeable therewith and has been so understood by the members of said Tribe of Ben-Hur, and that no special assessments or other exactions have ever been levied, demanded or received by said Supreme Tribe of Ben-Hur except as in these findings set forth: and no request was ever made by any of said complainants or by any other persons whomsoever that assessments, special or otherwise, should be levied upon the members of said Order for expense purposes.

XVII.

That by the laws of said Order the mortuary funds of said two classes A and B have since the creation of said Class B been required to be, have been and are kept separate and distinct except that under the laws of said order in force since the creation of said class B gains from forfeiture by lapses and interest earnings and savings from mortality in Class B, as determined by annual valuation may be transferred to other funds designated by the Executive Committee except the general or expense fund to be used for the common ad-

vantage of all members holding certificates in Class A and Class B who are in good standing at the date of such transfer, but that the surplus funds derived from contributions of members holding certificates in Class A cannot and never have been used for the payment of current claims on account of protection for members holding Class B certificates.

That since the creation of Class B there has been a saving to be used and available for use for the common advantage of all members of said Classes A and B in good standing, derived from forfeitures by lapsed, interest earnings and savings from mortality, amounting approximately to One Hundred Twenty-two Thousand Dollars ($122,000).

XVIII.

Said Master further finds that all expenditures made by said Supreme Tribe of Ben-Hur in the promotion, organization and maintenance of Class B were made primarily for the benefit of the membership of said Order as it existed on July 1st, 1908, 30/90 thereafter known as Class A, and that such expenditures were all in fact beneficial to the membership of said Order as it was then constituted, including plaintiffs and other members who did not transfer to Class B, as well as those who did transfer, and that said plan so adopted by said Supreme Session of 1908 and all legislation incident thereto enacted at said Session of 1908, including provisions for transfer and the terms upon which such transfer should be made, together with such provisions of existing laws as were continued in force or adopted at said Supreme Session pertaining to the creation and maintenance of said general or expense fund and including the division and distribution of relative advantages and burdens between said respect- classes embodied in said legislation, was conceived, promoted, framed and adopted by the members of said Order as it existed at the time of said Supreme Session of 1908 and their regularly constituted representatives then assembled primarily for the relief of the then existing financial embarrassment and threatened disruption of said Order as then constituted and which became and was known on and after July 1st, 1908, as said Class A.

That the creation of said Class B with said provisions for transfer thereto and other legislation incident thereto were intended to be and were the means by which it was sought to save, preserve and perpetuate said existing order and conserve the interest of its members; and that the adoption of said plan and the practical operation thereof have accomplished that purpose as well as securing upon a permanent basis advantageous to the members thereof, accessions to said order through their admission to Class B.

XIX.

Said Master further finds and reports that it is and has been at all times since the creation of said Class B impossible for said de-

fendant, Supreme Tribe of Ben-Hur, and its officers and Executive Committee charged with the administration of its affairs to keep and maintain an expense account setting forth the items of expense or relative portions thereof, which should be borne by said respective Classes or to apportion the total expense incurred during any
30/91 given period between said respective Classes so as to more equitably distribute the burdens of maintaining said fraternal beneficiary society between said respective Classes than the distribution of such burdens which automatically results and has automatically resulted from the creation and maintenance of said general or common expense fund and payment of all expenses therefrom as the same has been created and maintained and as its expenses have been paid therefrom by said Supreme Tribe of Ben-Hur and its proper officers and Executive Committee, including the individual defendants herein.

That while all expenses so incurred and paid in the organization and maintenance of Class B have resulted beneficially to Class A and the members thereof, as aforesaid, it is not and never has been practicable or possible for said Supreme Tribe of Ben-Hur or its officers to measure in dollars and cents the pecuniary benefit resulting to Class A or the members thereof from any particular item of expense or class of expenses incurred and paid as aforesaid.

Said Master further finds that aside from the method of providing for and paying the expenses of said Order so adopted and carried out by it through said common expense fund there is only one other plan which could be applied in this case so as to result in even approximate apportionment of expense according to benefits received, and that is a classification of expenses in such a manner as to group and aggregate all items of like character in separate columns and the apportionment of certain of these aggregated items of expense between said Classes A and B according to mean membership of said respective Classes and the apportionment of certain other aggregated items according to mean insurance in force in said Classes A and B, as determined in each case by the administrative officers of said defendant.

Said Master further finds and reports that said last described plan has not been demonstrated by experience and is not generally recognized among fraternal beneficiary societies as practicable and, so far as disclosed by the evidence, has never been applied by any fraternal beneficiary society or similar institution, and said Master
30/92 finds that it would not have been practicable and was not practicable to apply said last mentioned plan to the administration of said defendant's affairs nor would the application of such method or plan have resulted more favorably to said Class A nor to complainants and the other members of said Class A than the plan or method so adopted and carried out by said defendant.

Said Master further finds and reports that the books and records of said defendant, Supreme Tribe of Ben-Hur, have been so kept as that all items of expense can be so classified, aggregated and apportioned at the present time as readily as if the same had been actually classified, aggregated and apportioned in accordance with said plan

or method last described; and that the evidence introduced before said Master and herewith returned and reported to the Court fully discloses not only the source of all contributions for expense purposes, but also the aggregate sums disbursed and paid out of said general or common expense fund for all the various purposes for which the same were expended, and also the mean membership of each Class and the mean insurance in force in each Class, for each year during said period in question. That from June 1st, 1908, until the present day all money apportioned and appropriated for expenses from the payment of members of both of said classes, has by action of said Supreme Tribe of Ben-Hur, by and through its said Executive Committee, been placed in a common fund, and the expenses of both of said two classes have been paid from that fund without regard to mean protection or mean membership. That on July 15th, 1908, there was $83,437.85 in the Expense Fund, all of which has been contributed by members of Class A; that the entire contributions of Class A for expense purposes between July 15th, 1908, and April 15, 1913, amounted to $487,420.52, making a total of $930,858.37 available for expense purposes between said dates from the contributions of members of Class A; that the contributions of Class B members for expense purposes between said dates amounted to $469,897.35, which was the total amount available for expenses from the contributions of Class B members between said dates.

That the amounts expended by said Supreme Tribe of Ben-Hur from July 15th, 1908, to April 15th, 1913, on account 30/93 of Commissions of Organizers', Salaries of Organizers, Inspection of Risks, Lodge Supplies, one half of the salary of Supreme Chief, Traveling Expenses of Organizers and Field Managers, Advertising, Special Meeting of the Society and Dedication Meeting of the Society, were spent for securing new business in Class B, and the amounts spent on account of said items of expense between July 15th, 1908, and April 15th, 1913, aggregate $807,020.54. Such expenses properly chargeable to each of said classes, has resulted in the use, by defendants, for the payment of expenses incurred in securing new business in Class B, of a large sum of money contributed by members of Class A. That defendants intend to continue, and, unless restrained, will continue said practice in the future.

XX.

That the fiscal year of the corporate defendant began, at all times mentioned herein, on January 8th and ended on January 7th; that the aggregate amount of the disbursements of the corporate defendant on account of each and every item of expense for each of the fiscal years and parts of years between July 15th, 1908, and April 15th, 1913, was, as is shown on the table known and filed as "Smethurst Exhibit No. 1" and to be found on page 137 of the transcript of evidence returned herewith, except that the aggregate amount expended on account of Advertising for the fiscal year of 1913 was $2,511.30 instead of as shown in said table, and the aggregate

amount expended in said year on account of Printing and Stationery was $2,060.95 instead of as shown in said table; that the approximate mean protection in force and approximate mean membership in force in each of the two classes for each of the fiscal years and parts of years between July 15th, 1908, and April 15th, 1913, was, as is shown in defendant's answer to Inter-ogatory No. 17 (original set) in the part of such answer to be found on page 113 of the transcript of evidence returned herewith. During said hearing before said Master, it was agreed by the parties that if any distribution of the entire expense disbursements of the Supreme Tribe of Ben-Hur other than the division of said disbursements which arises and has arisen from the practice of paying all expenses of both classes out of a common fund should be decreed to be made, then the best basis of
30/94 apportionment of the following items, namely: Salaries of Agents not organizers; Salaries of Medical Examiners; Executive and other Committees; Salaries of Supreme Officers other than Supreme Chief; Traveling Expenses of Executive Committee, Agents and Supreme Officers; Salaries of Office Employes; Insurance Department, Printing and Stationery; Postage, Express and Telegraph; Legal Expenses (other than expense of litigating claims); Furniture and Fixtures; Miscellaneous; Fraternal Congress; Surety Bonds; Supreme Meeting; Donations; Rent of Safety Deposit; and Actuarial Fees, would be mean protection in force in each of said classes for each of the fiscal years and parts of years between July 15th, 1908, and April 15th, 1913; and that, if such an apportionment is to be made, the apportionment of the item Official Publication should be made upon the basis of the approximate mean membership in force in each of said two classes for each of the fiscal years and parts of years between July 15th, 1908, and April 15, 1913, and that if an apportionment is to be made the apportionment of the item Legal Expenses (litigating claims) should be made upon the basis that the component items of said aggregated item should be charged against the class to which the litigated claim or certificate belonged, as shown by the books of the corporate defendant, which apportionment would result in charging to each of said classes, for each of said fiscal years and parts of years, the amounts shown as charged to such items in the table filed and known as "Smethurst Exhibit No. 1," and to be found at page 137 of the transcript of evidence returned herewith. The Master further finds that during the fiscal years of 1909, 1910 and 1911 the Supreme Tribe of Ben-Hur used as its offices property which had been purchased theretofore with money paid in, before the formation of Class B, by members of Class A for expense purposes; that the rent of this property was reasonably worth $800.00 per year and that such sum is shown by the books of the corporate defendant to have been paid as such rent:

The Master further finds, that an apportionment of the expense disbursements of the corporate defendant for the period beginning July 15th, 1908, and ending April 15th, 1913, upon the assumptions following, namely, the following items and parts of items
30/95 apportioned between the two classes—Class A and Class B—on the mean protection basis as hereinabove explained: Sal-

aries of Agents not Organizers, Salaries of Medical Examiners: Executive and Other Committees, Salaries of Supreme Officers other than Supreme Chief, and one-half of the salary of the Supreme Chief: Traveling Expenses of the Executive Committee, Agents and Supreme Officers; Salaries of Office Employes; Insurance Department, Printing and Stationery, Postage, Express and Telegraph; Other Legal Expresses, Furniture and Fixtures, Miscellaneous, Fraternal Congress, Surety Bonds, Supreme Meeting, Donations, Rent of Safety Deposit, Actuarial Fees, and Rent: the item of Official Publication apportioned between the two, Class A and Class B, on the mean membership basis as hereinbefore explained; the item Legal Expenses (litigating claims) apportioned between the two, Class A and Class B, as shown by the books of the corporate defendant, as hereinbefore explained; and items Interest and Taxes and Repairs to real estate, be charged in their entirety against Class A; and the following items be charged in their entirety against Class B; Commissions of Organizers, Salaries of Organizers, Inspection of Risks, Lodge Supplies, one half of the Salary of the Supreme Chief, Traveling Expense of Organizers and Field Managers, Advertising, Special Meeting of the Society and Dedication Meeting of the Society, would result in showing that according to such hypothetical apportionments, there would be charged against Class A the sum of $472,908.34, and against Class B the sum of $927,156.82. That assuming such charges and adding thereto the amounts available for expense purposes from each of the respective classes, as hereinabove set out, it appears on the basis of such apportionment that Class A has been paid in for expense purposes $457,850.03 more than it has spent, while Class B has spent $457,259.47 more than it has paid in for expense purposes. The Master further finds that on April 15th, 1913, the balance on hand in the aggregate expense fund of the Supreme Tribe of Ben-Hur was $690.56. The Master further finds that if a division of expenses is made between classes A and B by apportioning for each of the fiscal years and parts of years between July 15th, 1908, and April 15, 1913, the following items on a basis of mean protection, to wit: Commissions of Organizers, Salaries of Organizers, 30/96 Salaries of Agents not Organizers, Salaries of Medical Examiners, Inspection of Risks, Officers' Salaries, Executive and other committees, Salaries of office Employes, Traveling expense of Field Manager Organizers, superior officers and others; Insurance Departmental charges, Advertising, printing, stationery, postage, express and telegraph, legal expenses, other than those arising from the litigation of claims, furniture and fixtures, Miscellaneous expense, Fraternal Congress Expenses; Surety bonds, Interest for the year 1913 Supreme Session of the Order, Special Meetings of Supreme Tribe Dedication Meeting, Donations, Rent of Safety Deposit, Actuarial fees; rent for 1912 and to April 15, 1913, (time new building has been occupied); and if the following items of expense are apportioned between said classes on a basis of mean membership in force, to wit: Official Publication (Chariot) and Lodge Supplies and if the following items are charged entirely to Class A, to wit: Rents (except for the year 1912-1913) Interest for the year 1911, taxes and

repairs on real estate—legal expenses litigation claims against Class A; and if the following items are charged in their entirety to Class B, to wit; Legal Expense, litigation of claims against Class B: Then and in such event, Class A would be charged with $1,125,714.70 and Class B would be charged with the sum of $274,350.46.

On this last hypothesis, Class A has paid $194,856.33 less than its fair proportion of the total expense, and Class B has paid $195,546.59 more than its fair proportion of said total expense.

That since the organization of Class B the investments of the Supreme Tribe of Ben-Hur have yielded and now yield an average interest return of over four per centum per annum. That prior to December 31st, 1912, the Class B business secured from members of the general public had yielded and accumulated over and above a sufficient reserve on such business, calculated on the National Fraternal Congress table of mortality and four per cent. interest, a sum of $211,743.60.

XXI.

That when Class B was organized there was a well organized extensive and active social organization consisting of over one
30/97 thousand courts throughout the country which had been organized and maintained entirely by the members of Class A; that the persons who thereafter joined Class B received all social and other benefits arising from such organization; that the expense of the local courts have been and are borne entirely by the members of such courts from court funds which have been and are independent of and free from control by the Supreme organization, and which have been and are made up entirely of the contributions of the members of the respective courts. That Class A members have paid and do pay the same court dues into such court funds as have been and are paid by Class B members, and that any person who has been or is admitted to social membership in any court has paid and pays the same dues into such court fund as have been and are paid by members of Class A and Class B without taking out any insurance whatever, or becoming a member of either Class A or Class B; that all work done by the officers or agents of the corporate defendant in advancing the enjoyment, enthusiasm and spirit of the local courts and the members thereof has been and is incidental to the securing of new Class B business and has been and is done for the purpose of securing such business, and continuing the business of Class A.

XXII.

That at the Supreme Session of the corporate defendant, held in 1908, no distinct and independent resolution, motion or law expressly providing for a common fund for Class A and Class B, or providing that all money contributed for expense purposes by the members of the two classes should be placed in a common fund and the expenses of both classes paid from such fund without regard to the amount properly chargeable to the respective classes, was proposed, discussed,

adopted or passed; that no such distinct and independent legislation was proposed, discussed, adopted or passed at any succeeding Supreme Session.

That complaints and the members of Class A have been vigilant and diligent and have acted without delay in discovering and seeking to remedy the grievances set up in their bill herein; that
30/98 there has been no loss of evidence and no change in the position of the parties or of any other persons or persons by reason of any lapse of time in bringing this action.

XXIII.

That there was in the emergency fund of said Supreme Tribe of Ben-Hur on April 15th, 1913, the sum of One Million Two Hundred Forty-Five Thousand, One Hundred Eighty-one and 33-100 Dollars ($1,245,181.33) called a balance which had been accumulated from the periodical payments of members of said Supreme Tribe of Ben-Hur prior to the installation of said Class B and by members of Class A since the installation of Class B, including however the contributions of the members of Class A who have transferred to Class B made before their respective transfers; and that it is the intention of the defendants to transfer the aforesaid sum of Fifty-one thousand four hundred seventy-two and 61-100 Dollars ($51,472.61) from the emergency fund to the mortuary fund of Class B together with the proportionate shares in said emergency fund of all members so transferring after December 31st, 1912.

That said emergency fund was provided and is now used for the purpose of meeting death claims of members of Class A when and after the current mortuary funds of said Class A, known as the "Benefit Fund" shall have become exhausted, and that it is so provided by Section 124 of the laws of said corporation.

That the balance in the general or expense fund on April 15, 1913, was Six Hundred Ninety and 56-100 ($690.56) as hereinbefore stated.

XXIV.

That the total member-ship of said Tribe of Ben-Hur at the time said Class B was installed was approximately ninety-six thousand, four hundred and eighty-nine (96489) practically all of whom held contracts or certificate of insurance and who were thereafter known as "Class A."

That on and prior to October 15, 1913, approximately
30/99 twenty-three thousand (23,000) members of Class A availed themselves of the privileges of said legislation of 1908 and transferred to Class B under the conditions thereof; that on and prior to said last mentioned date approximately ninety-five thousand (95,000) persons had been received into said Tribe of Ben-Hur as members of said Class B in addition to those who transferred from Class A; and that by death, lapse and otherwise than by transfer approximately twenty-eight thousand (28,000) members of Class A had terminated their membership therein during the period beginning July 15th,

1908, and ending October 15th, 1913, so that on said last mentioned date there remained in Class A approximately forty-five thousand (45,000) members.

XXV.

In Section 92 of the General Laws of the Tribe of Ben-Hur as in force June 20th, 1912, among other things, are found the following provisions:

"Members in Class A in good standing on the books of the Supreme Scribe may voluntarily transfer their Beneficial membership to Class B as per table of Rates given for Class B members without medical examination and be entitled to the rate as set forth in the Table for Class B members for term Certificates (Table 1) or for Whole Life Certificates (Table 2) at four years less than their attained age, or for Death and Disability certificates (Table 3) at three years less than their attained age at the time of such application for transfer; provided such transfer be made on or before the 30th day of June, 1913.

After July 1, 1913, members in Class A may voluntarily transfer their beneficial membership to Class B as per Table of Rates given for Class B members, without medical examination, and be entitled to the rates as set forth in the Table for Class B members, at their attained age, at the time of application for such transfer.

Provided, Class A members who desire to transfer to Term certificates as per Table 1 shall not have attained an age older than fifty years, for their age of admission to Class B, and provided that Class A members who desire to transfer to Death and Disability
30/100 certificates as per Table 3 must be free and clear of any and all physical disabilities and of the partial disabilities designated in Sections 98 and 99 of the Laws, Rules and Regulations of the Supreme Tribe, at the time of such transfer to Class B certificates."

Upon the above and foregoing findings, the undersigned Master in Chancery makes and states the following conclusions of law:

I.

The defense of laches set up in the Answer is not sustained.

II.

The members of Class B of the insurance department of the Supreme Tribe of Ben Hur who have transferred from Class A by such act of transfer relinquished any right or interest which they had immediately before the transfer, as Class A members, in the Emergency Fund and they have no right to demand that any part of said Emergency Fund shall be taken from said Emergency Fund and placed in the mortuary fund of Class B; and that the defendants have no power to make any such change of any part of the Emergency Fund to the Mortuary Fund of Class B and the plaintiffs are entitled to a decree enjoining the defendants from making or giving out that they intend to make any such change.

III.

Upon all the issues made by the pleadings except the issues involved in said Conclusions of Law No. 1 and No. 2, the equities are with the defendants and the plaintiffs are not entitled to any decree in respect of any such issues.

After the submission, respectively, to the solicitors for the complainants and the solicitors for the defendants of the tentative report of the said Master in Chancery, both the complainants and the defendants filed with said Master in Chancery, respectively, the complainant's Exceptions to said Report and the defendants' Exceptions to said Master's Report, and the said Complainant's Exceptions marked Exhibit "A" and the said Defendants' Exceptions marked Exhibit "B" are hereto attached and herewith returned to the said Court as a part of the said Master's report.

Respectfully submitted,

EDWARD DANIELS,
Master in Chancery.

January 8th, 1915.

30/101 In the District Court of the United States for the District of Indiana.

In Equity. No. 7.

GEORGE BALME et al., Complainants,

vs.

THE SUPREME TRIBE OF BEN-HUR et al., Defendants.

Complainants' Exceptions Before Master to Master's Report.

"EXHIBIT A."

E. D.

The complainants except to the report of Edward Daniels, Esq., Master in Chancery, filed herein in the following particulars:

I. To the eighth finding of fact wherein it is found that the plan of reorganization of the order was adopted at the Supreme Session of 1908 after full discussion, criticism, explanation and consideration thereof, because while certain features of said plan were discussed at said session, neither the method of paying expenses nor the amount or adequacy of the provision for expense in the proposed class B rates were discussed, criticised, explained or considered, which fact is shown by the testimony of Dr. Gerard, Mr. Snyder and Mr. Landis.

II. To the eighth finding of fact wherein it is found that as a part of said plan adequate rates were provided to be paid by persons who should thereafter become members of class B, because the provision

for expense in said rates was not adequate or sufficient, which fact is shown by the testimony of Dr. Gerard, Mr. Snyder, Mr. Iliff and Mr. Landis, and because there is no testimony in the record that said expense provision in said rates was adequate or sufficient.

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III. To the tenth finding of fact wherein it is found that the rates provided by said plan for members receiving class B certificates were adequate, for the reasons and on the testimony specified in exception No. II.

IV. To the twelfth finding of fact wherein it is found that the security of the insurance protection guaranteed by the certificates of plaintiffs and other members of class A who have not transferred to class B was greatly increased by the installation of class B and the system of transfers incident thereto together with the practical operation of said plan, and wherein it is found that such members participated in all the benefits and advantages of said reorganization so strengthened and improved by the creation of class B and the legislation incident thereto, because the security of the insurance protection guaranteed by the certificates of plaintiffs and members of class A who have not transferred to class B was in no way increased by the installation of class B or the system of transfer incident thereto or the practical operation of said plan, because such members did not derive or participate in any benefit or advantage as a result of the adoption of said plan, and because, so far as such members and the security of their certificates were concerned, the organization was not strengthened or improved; all of which is shown by defendants' answers to the second set of interrogatories and the testimony of Mr. Iliff and by the total absence of proof of any facts upon which a different finding could be based.

V. To the thirteenth finding of fact wherein it is found that said plan adopted in 1908 was the only practicable known method of relieving said organization from existing financial embarrassment and probably dismembership and disintegration in the near future, because said plan contemplated and contained an insufficient provision for expense in the class B rates, and because a similar plan which contemplated and contained sufficient and adequate provision for expense in the class B rates, would have been more practical and better than the one adopted, which facts are shown by the testimony of Dr. Gerard, Mr. Snyder, Mr. Landis, Mr. Iliff and Mr. Buttolph.

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VI. To the thirteenth finding of fact wherein it is found that all the representations made and held out to the members of the Tribe of Ben-Hur respecting said plan or system by the defendant, Supreme Tribe of Ben-Hur and its officers, agents and employes, were in fact true, because it was represented by said defendants and its officers, agents and employes that the provision for expense in the rates of class B were adequate and sufficient, which representations were in fact untrue for the reason and upon the testimony specified in exception No. IV.

VII. To the thirteenth finding of fact wherein it is found that all expenditures made by defendant in furtherance of said plan and in carrying out the same were made for the purpose of preventing the dissolution and dismemberment of said organization on account of its heavy liability and approaching inability to meet its mortuary expenses, all of which expenditures were made necessary by the financially embarrassed condition of the membership known after July 1st, 1908 as class A, and were made for the benefit of said class A members, because a large part of said expenditures were made for the purpose of securing and writing new business in class B, because complainants and the members of class A who have not transferred to class B have derived no benefit or advantage from the procuring or writing of such new class B business, and because the members of class A who do not transfer in the future will derive no benefit or advantage from the procuring or writing of such business, unless Section 92 of the laws of the defendant, the Supreme Tribe of Ben-Hur, remains unchanged and unless and until the Executive Committee of said defendant transfer a portion of the profits of class B for the use of members of class A, and because in no event can the members of class A who do not transfer in the future receive from class B any thing more than the return of a very small part of the money contributed by them and applied by defendants to the use and benefit of class B; all of which is shown by defendants' answers to both sets of interrogatories and the testimony of Mr. Iliff.

VIII. To the thirteenth finding of fact wherein it is found that said plan, including the creation of class B and the system
30/104 of transfers thereto from class A, has in all respects resulted beneficially not only to said organization as a whole but also to the members of class A who have not transferred to class B, for the reasons and upon the testimony specified in Exceptions Nos. IV and VII.

IX. To the fourteenth finding of fact wherein it is found that the expense burdens upon the members of defendant, The Supreme Tribe of Ben-Hur, are imposed with due regard to the relative benefits conferred, because said burdens are not so imposed, but the members of class A bear an expense burden much larger proportionately than the benefits they receive, while the class B members receive much larger benefits proportionately than the expense burden they bear, all of which is shown by defendants' Answer, by the defendants' answers to both sets of inter-ogatories, by the testimony of Mr. Iliff and by the total lack of proof of facts upon which a different finding could be based.

X. To the eighteenth finding of fact wherein it is found that all expenditures made by said Supreme Tribe of Ben-Hur in the promotion, organization and maintenance of class B were made primarily for the benefit of the membership of said order as it existed on July 1st, 1908, thereafter known as class A, and that said expenditures were all in fact beneficial to the membership of said order as it was then constituted, including plaintiffs and other members

who did not transfer to class B, and that the adoption of the plan adopted in 1908 and the practical operation thereof have accomplished the purpose of saving, preserving and perpetuating class A and conserving the interest of its members, as well as securing upon a permanent basis advantageous to such members, accessions to the order through their admission to class B, for the reasons and upon the testimony specified in Exceptions Nos. IV, VII and IX.

XI. To the eighteenth finding of fact wherein it is found that the plan adopted in 1908 and the legislation incident thereto included some division and distribution of relative advantages and burdens between said respective classes embodied in said legislation, because said plan and said legislation included no provision for any division or distribution of relative advantages or burdens between said classes, as shown by defendants' Answer, by defend-
30/165 ants' answers to the first set of interrogatories, and by the testimony of Mr. Iliff.

XII. To the nineteenth finding of fact wherein it is found that it is and has been at all times impossible for defendants, The Supreme Tribe of Ben-Hur, and its officers and Executive Committee charged with the administration of its affairs to keep and maintain an expense account setting forth the items of expense or relative portions thereof which should be borne by the respective classes or to apportion the total expense incurred during any given period so as to more equitably distribute the burdens of maintaining said fraternal beneficiary society between said respective classes than the distribution of such burdens which automatically results and has automatically resulted from the creation and maintenance of said general or common expense fund and the payment of all expenses therefrom as the same has been created and maintained and as its expenses have been paid therefrom by said Supreme Tribe of Ben-Hur and its proper officers and Executive Committee and that it is not and never has been practical or possible for said Supreme Tribe of Ben-Hur or its officers to measure in dollars and cents the pecuniary benefit resulting to class A or the members thereof from any particular item of expense or class of expenses incurred and paid as aforesaid, because it is and has been at all times since the creation of class B, practical and easy for the defendants to so keep the expense account of the order as to apportion all items of expense between the two classes with practical fairness to each class and the members thereof, and because the distribution which results and has resulted from the maintenance of a common expense fund for said two classes and the payment of all expenses of said two classes therefrom does not and has not resulted in fairness between said classes, but has resulted to the advantage of class B and the disadvantage of class A, all of which is shown by the testimony of Mr. Smethurst, by the defendants' answers to both sets of interrogatories and by the testimony of Mr. Buttolph, Mr. Landis and Mr. Iliff.

XIII. To the nineteenth finding of fact wherein it is found that all expenses incurred and paid in the organization and maintenance

30/106 of class B have resulted beneficially to class A and the members thereof, for the reasons and upon the testimony specified in Exceptions Nos. IV, VII and IX.

XIV. To the nineteenth finding of fact wherein it is found that aside from the method of paying all expenses of both of said classes from a common fund, there is only one other plan which could be applied in this case so as to result in even approximate apportionment of benefits according to benefits received, and that is a classification of expenses in such a manner as to group all items of like character in separate columns and the apportionment of certain of these aggregate items of expenses between classes A and B according to mean membership of respective classes and the apportionment of certain other aggregate items according to mean insurance in force in said classes A and B, as determined in each case by the administrative officers of said defendants, because there are many items of expense disbursements of said defendant which do not benefit the members of the respective classes in proportion either to the respective membership or the respective protection in force in said classes, because such an apportionment cannot and does not result in fairness as between the members of said two classes, but results to the advantage of the members of class B and to the disadvantage of the members of class A, and because an apportionment of each item of the expense disbursements of said defendant according to the character of the item and the benefit received by the members of the respective classes from the disbursement results and will result in fairness and justice to all members, all of which is shown by the testimony of Mr. Smethurst, by the defendants' answers to both sets of interrogatories and by the testimony of Mr. Buttolph, Mr. Landis and Mr. Iliff.

XV. To the nineteenth finding of fact wherein it is found that the expense of securing new business in class B was properly chargeable to each of said two classes, because said expense is not properly chargeable either to each of said classes or to both of said classes, but should be charged in its entirety to class B, as is shown by the defendants' answers to the second set of interrogatories and by the testimony of Dr. Gerard, Mr. Snyder and Mr. Iliff.

30/107 XVI. To the refusal of the Master to find that the defendants between July 15th, 1908, and April 15th, 1913, paid all expenses of Class A and Class B from a common fund without regard to the proportion of such expenses properly chargeable to each of said classes, as requested in the sixth finding of fact requested by complainants, such practice having been admitted in defendants' Answer and shown by the defendants' answers to the first set of interrogatories and by the testimony of Mr. Iliff.

XVII. To the refusal of the Master to find that, upon the apportionment of expense disbursements between class A and class B mentioned in the seventh finding of fact of complainants' proposed report, that there was a deficit in the class B expense fund on January 7th, 1909 of $62,065.04; a deficit in said fund on January 7th,

1910 of $145,549.59; a deficit in said fund on January 7th, 1911 of $236,279.76; a deficit in said fund on January 7th, 1912 of $366,459.34; a deficit in said fund on January 7th, 1913 of $472,772.72; that on each of said respective dates there was, on the basis of said apportionment, a surplus in the class A expense fund, which surplus was in every case larger than the deficit existing on said respective date in the class B expense fund; and that interest at four per centum per annum on the deficiency in the class B expense fund as shown by said yearly deficits, to April 15th, 1913 amounts to $36,941.89, as requested in said seventh finding of fact requested by complainants.

XVIII. To the refusal of the Master to find that the traveling expenses of the Medical Department will be incurred, in part, in the future in investigating and assisting in the litigation of disputed or questionable claims, and in the inspections of risks; and that the traveling expenses of the Supreme Chief will be incurred in the future in securing new business in class B, all of which was requested in the eighth finding of fact requested by complainants, and as shown by defendants' answers to the second set of interrogatories and by the testimony of Mr. Iliff and Dr. Gerard.

30/108 XIX. To the third conclusion of law because the same is not supported by the findings of fact on the evidence, but is against the evidence and the findings and the law.

XX. To the refusal of the Master to find the first, second, third, fourth, fifth, sixth and seventh conclusions of law requested by complainants.

L. J. CRAWFORD, JR.,
Solicitor for Complainants.

30/109 In the District Court of the United States for the District of Indiana.

In Equity.

No. 7.

GEORGE BALME et al., Complainants,

vs.

THE SUPREME TRIBE OF BEN-HUR et al., Defendants.

Defendants' Exceptions Before the Master to the Master's Tentative Report.

"Exhibit B."

E. D.

The defendants each severally except to the following portions of the tentative report of Honorable Edward Daniels, Master in Chancery, heretofore submitted to counsel for the respective parties, to-wit:

I. To so much of Paragraph 19 of the finding of facts of said tentative report as states:

"That the amounts expended by said Supreme Tribe of Ben-Hur from July 15th, 1908, to April 15th, 1913, on account of Commissions of Organizers, Salaries of Organizers, Inspection of Risks, Lodge Supplies, one half of the salary of Supreme Chief, Traveling Expenses of Organizers and Field Managers, Advertising, Special Meeting of the Society and Dedication Meeting of the Society, were spent for securing new business in Class B, and the amounts spent on account of said items of expense between July 15th, 1908, and April
15th, 1913, aggregate $825,145.48. Such expenses prop-
30/110 erly chargeable to each of said classes, has resulted in the use, by defendants for the payment of expenses incurred in securing new business in Class B, of a large sum of money contributed by members of Class A. That defendants intend to continue and, unless restrained, will continue said practice in the future."

For the reason that the items of money expended as stated by the Master in the foregoing language were not expended exclusively for the purpose of securing new business in Class B, but were in part expended, as shown by the evidence for the general welfare of the defendant society as a whole, including members of both classes, A and B; and for the further reason that said expenses were not properly chargeable nor was any item thereof to each of said classes A and B as stated by the Master, but were properly chargeable to the society as a whole, as shown by the evidence.

For the further reason that as shown by the evidence, neither the incurring of said expenses nor the payment thereof, has resulted in the payment of expenses incurred in securing new business in Class B of a large sum of money contributed by the members of Class A, but as shown by the evidence, has resulted in the payment from a common fund contributed to by members of both classes, of the legitimate expenses of the Order as a whole, such expenditures so paid being as nearly proportionate to the benefits received by said respective classes therefrom, as it was practicable to determine.

For the further reason that as shown by the evidence, it is not the intention of the defendants or any of them, unless restrained, to continue any method of paying expenses of said Order or the respective classes thereof, other than the payment of all legitimate expenses of said society as a whole, out of said common expense and contributed to by each of said classes, thereby distributing the burden of said expense between said classes respectively, in proportion to the benefits derived by each as nearly as practicable.

II. To so much of Paragraph 20 of the finding of facts of said tentative report as states:

"That during said hearing before said Master it was
30/111 agreed by the plaintiffs and the defendants that, if an apportionment of the expense disbursements of the Supreme Tribe of Ben-Hur is to be made between Class A and Class B, the items Salaries of Agents not Organizers; salaries of Medical Exam-

iners; Executive and other Committees; Salaries of Supreme Officers other than Supreme Chief; Traveling Expenses of Executive Committees, Agents, and Supreme Officers; Salaries of Office Employes; Insurance Department, Printing and Stationery; Postage, Express and Telegraph, Other Legal Expenses; Furniture and Fixtures; Miscellaneous; Fraternal Congress; Surety Bonds; Supreme Meeting; Donations; Rent of Safety Deposit; and Actuarial Fees, and each of said items could, if an apportionment is to be made, be fairly and equitably apportioned between the two classes on the basis of the mean protection in force in each of said classes for each of the fiscal years and parts of years between July 15th, 1908, and April 15th, 1913, and that, if such apportionment is to be made, an apportionment of the item Official Publication upon the basis of the approximate mean membership in force in each of said two classes for each of the fiscal years and parts of years between July 15th, 1908, and April 15th, 1913, an apportionment of the item Legal Expenses (Litigating claims) upon the basis that the component items of said aggregate item should be charged against the class to which the litigated claim or certificate belonged, as shown by the books of the corporate defendant, which apportionment would result in charging to each of said classes, for each of said fiscal years and parts of years, the amounts shown as charged to them in the table filed and known as "Smethurst Exhibit*ion* No. 1", and to be found at page 137 of the transcript of evidence returned herewith; and the charging of the entire item Interest against Class A, are, and each of said apportionments and charges would be, fair and equitable."

For the reason that any admission made by the defendants or any of them, upon the hearing of said cause, as to the fairness or practicability of an apportionment of the several items of expense mentioned by the Master in the foregoing language upon the basis therein mentioned, was coupled with and embodied in a hypo-
30/112 thetical apportionment of the entire expense or practically the entire expense of administering said society and does not, in the judgment of the defendants, and as shown by the evidence, represent a fair and equitable distribution of said items of expense except and unless all expenses are apportioned upon bases set forth in said hypothetical apportionment above referred to and as substantially embodied and set forth in the testimony of defendants' witnesses, Iliff, Landis and Buttolph; that as shown by the evidence, the several items of expense and the benefits derived from services for which such items of expense were in large part incurred, are so interdependent that it would not be feasible, fair nor equitable to apportion the items of expense mentioned by the Master in the foregoing language at all, independently of a general system of apportionment which should distribute all items of expense upon the general plan set forth in the testimony of said witnesses, Iliff, Landis and Buttolph.

III. Said defendants further except to the following portion of Paragraph 20 of the finding of facts of said tentative report, to wit:

"That an apportionment of the expense disbursements of the corporate defendant for the period beginning July 15th, 1908, and end-

ing April 15th, 1913, upon the assumptions following, namely, the following items and parts of items apportioned between the two classes,—Class A and Class B—on the mean protection basis as hereinabove explained; Salaries of Agents not Organizers, Salaries of Medical Examiners, Executive and other Committees, Salaries of Supreme Officers other than Supreme Chief, and one-half of the Salary of the Supreme Chief, Traveling Expenses of the Executive Committee, Agents, and Supreme Officers other than Supreme Chief, Salaries of Office Employes, Insurance Department, Printing and Stationery, Postage, Express and Telegraph, Other Legal Expenses, Furniture and Fixtures, Miscellaneous, Fraternal Congress, Surety Bonds, Supreme Meeting, Donations, Rent of Safety Deposit, Actuarial Fees, and Rent; the item of Official Publication apportioned between the two, Class A and Class B, on the mean membership basis as hereinbefore explained; the item Legal Expense (Litigating claims) apportioned between 30/113 the two, Class A and Class B, as shown by the books of the corporate defendant, as hereinbefore explained; the item Interest charged in its entirety against Class A; and the following items be charged in their entirety against Class B: Commissions of Organizers, Salaries of Organizers, Inspection of Risks, Lodge Supplies, one-half of the Salary of the Supreme Chief, Traveling Expense of Organizers and Field Managers, Advertising, Special Meeting of the Society and Dedication Meeting of the Society, shows that, according to such apportionments, there would be charged against Class A the sum of $472,908.34, and against Class B the sum of $927,156.82. That assuming such charges and adding thereto the amount available for expense purposes from each of the respective classes, as hereinabove set out, it appears on the basis of such apportionment, Class A has paid in for expense purposes $457,950.03 more than it has spent while Class B has spent $457,259.47 more than it has paid in for expense purposes. That the balance on hand in the aggregate expense fund of the Supreme Tribe of Ben-Hur was $690.56. That since the organization of Class B the investments of the Supreme Tribe of Ben-Hur have yielded and now yield an average interest return of over four per centum per annum. That prior to December 31st, 1912, the Class B business secured from members of the general public had yielded and accumulated, over and above a sufficient reserve on such business, calculated on the National Fraternal Congress table of mortality and four per cent interest, a sum of $211,743.60."

For the reason that there is no evidence that the method and basis of apportionment embodied in so much of the Master's Tentative finding and report as is quoted in this paragraph, would be approximately fair or equitable as between the respective classes; but that on the contrary as shown by the evidence, such method of apportionment would be impracticable, inequitable and unfair to Class B and the members thereof, because the adoption of such method of apportionment would result in relieving the members of Class A from the payment of any substantial part of the cost of saving its members and their investment from dismemberment and

loss with which they were threatened at the time of the organization of Class B.

30/114 For the further reason that as found by the Master elsewhere in said tentative report, any such apportionment as that assumed in the portion of Paragraph 20 herein excepted to, would be impracticable, unfair and inequitable, and it is therefore wholly immaterial as to what such an apportionment would result in with respect to an accounting between said respective classes with respect to said expenses so incurred and paid.

IV. To all of Paragraph 22 of the finding of facts of said tentative report; for the reason that as shown by the evidence in said cause, it was provided in the legislation of 1908, in substance in effect as a part of the general plan of rehabilitating said society that all money contributed for expense purposes by the members of said society should be paid into a common fund out of which all legitimate expenses of the society should be paid without apportioning the separate items of expense so incurred and paid to the respective classes or otherwise distributing said expenses except as the payment of the same out of said common fund results and has resulted automatically in the distribution thereof between said classes, approximately according to the benefits derived.

For the further reason that as shown by the evidence, all members of Class A, including complainants, were guilty of laches in seeking to remedy the alleged grievances set up in their Bill of Complaint and by reason of said laches, the parties cannot be placed in statu quo as they could have been, if said remedy had been promptly sought in this, to wit: that Class A and the members thereof received during the period beginning with the adoption of the legislation of 1908 and ending with the time this suit was commenced, substantial benefits, including insurance protection, business and social advantages and in many instances their beneficiaries were paid during said period the full amount, respectively, of the insurance carried by them, all of which benefits were in part or in whole, due to the adoption of the legislation of 1908, the installation of Class B thereunder, the acquisition of new members of said society, constituting Class B, and the contributions of said new members made upon the theory that said legislation of 1908 would be permanently operative as a whole and that the

30/115 & 116 same had been created, acquiesced in and approved by the members of Class A, including complainants.

V. To the first conclusion of law stated by the Master in said tentative report, to wit: "That the defense of laches set up in the answer is not sustained," for the reason that under the evidence and under the findings of fact reported by the Master, the defense of laches set up in the answer of the defendants, was and is sustained and the Master should have so conceded.

VI. To the following portion of the second conclusion of law stated by the Master, to wit:

"The members of Class B of the insurance department of the Supreme Tribe of Ben-Hur who have transferred from Class A by such act of transfer relinquished any right or interest which they had immediately before the transfer, as Class A members, in the Emergency fund and they have no right to demand that any part of said Emergency Fund shall be taken from said Emergency Fund and placed in the mortuary fund of Class B; and that the defendant- have no power to make any such change of any part of the Emergency Fund to the Mortuary Fund of Class B and the plaintiffs are entitled to a decree enjoining the defendants from making or giving out that they intend to make any such change."

For the reason that said portion of said conclusion of Law, No. 2 is not supported by the finding of facts upon which the same is based nor by the evidence in said cause.

VII. Said defendants further except to the tentative report of said Master for the failure of the Master to state as a conclusion of law upon the facts so tentatively found and reported, that the complainants' bill was without equity and that the same should be dismissed for want of equity.

Respectfully submitted,

CRANE & McCABE,
MILLER, SHIRLEY, MILLER & THOMPSON,
Solicitors for Defendants.

30/117 In the District Court of the United States for the District of Indiana.

In Equity.

No. 7.

GEORGE BALME et al.

vs.

SUPREME TRIBE OF BEN-HUR et al.

Defendants' Exceptions to the Report of the Master.

Come now the defendants by counsel and file their exceptions to the report of the Master in Chancery herein, in the words and figures following, towit:

The defendants each and severally except to the following portions of the report of the Honorable Edward Daniels, Master in Chancery filed in this cause on the 8th day of January, 1915, to-wit:

To so much of Paragraph 13 of the Findings of Fact contained in said Master's report as finds that the increase in the per capita interest in said mortuary fund of the members of Class "A" who

did not transfer, during a period ending April 15, 1913, was derived from four sources:

1. Interest accretions.
2. Gain from forfeiture by lapse.
3. Gain by death.
4. Gain of the shares of members who have transferred to Class "B."

For the reason that said gain or increase in the per capita interest of the Class "A" member in this *find* is derived principally from said sources one, two and three, and said gain or increase is derived principally from sources other than from the gain of the
30/118 shares of members who have transferred to Class "B" and defendants each except to the failure of the Master to so find.

For the further reason that even if no part of the interest of said transferring members is considered, there will still be a large increase in the per capita interest of Class "A" members in said mortuary funds consisting of the benefit and emergency fund and the defendants each except to the failure of the Master to so find.

For the reason that said gain or increase is derived from sources other than from the interest of members who have transferred to Class "B";

For the further reason that, even if no part of the interest of said transferring members is considered, there would still be a large increase in the interest of Class "A" members in said emergency fund, and these defendants severally except to the failure of the Master to so find.

II. To so much of Paragraph 19:

"That the amounts expended by said Supreme Tribe of Ben-Hur from July 15th 1908, to April 15, 1913, on account of Commissions to Organizers, Salaries of Organizers, Inspection of Risks, Lodge Supplies, one half of the salary of Supreme Chief, traveling expenses of Organizers, and Field Managers, Advertising, Special Meeting of the Society and Dedication Meeting of the Society, were spent for securing new business in Class B, and the amounts spent on account of said items of Expense between July 15th, 1908, and April 15th, 1913, aggregate $825,145.48. Such expenses properly chargeable to each of said classes, has resulted in the use, by defendants, for the payment of expenses incurred in securing new business in Class B, of a large sum of money contributed by members of Class A. That defendants intend to continue and, unless restrained, will continue said practice in the future."

For the reason that the items of money expended as stated by the Master in the foregoing language were not expended exclusively for the purpose of securing new business in Class B, but
30/119 were in part expended, as shown by the evidence, for the general welfare of the defendant society as a whole, including members of both classes, A and B, and for the further reason that said expenses were not properly chargeable nor was any item thereof properly chargeable to each of said classes, A and B, as stated

by the Master, but were properly chargeable to the society as a whole, as shown by the evidence.

For the further reason that as shown by the evidence, neither the incurring of said expenses nor the payment thereof, has resulted in the payment of expenses incurred in securing new business in Class B of a large sum of money contributed by the members of Class A, but as shown by the evidence, has resulted in the payment from a common fund contributed to by members of both classes of the legitimate expenses of the Order as a whole, such expenditures so paid being as nearly proportionate to the benefits received by said respective classes therefrom, as it was practicable to determine.

For the further reason that as shown by the evidence, it is not the intention of the defendants or any of them, unless restrained, to continue any method of paying expenses of said Order or the respective classes thereof, other than the payment of all legitimate expenses of said society as a whole, out of said common expense fund contributed to by each of said classes, thereby distributing the burden of said expense between said classes respectively, in proportion to the benefits derived by each as nearly as practicable.

For the further reason that so much of said Finding No. 19 as set forth above is a conclusion shown by the primary facts reported by said Master to be incorrect, in this, that it appears from the facts found in Paragraph 21 of said report that a portion of the money so found to have been expended was expended in continuing the business of Class "A" as shown by the last line of Paragraph 21 of said report.

III. To so much of Paragraph 22 of the Findings of Fact contained in said Master's reports as states that:

"That complainants and members of Class A have been vigilant and diligent and have acted without delay in discovering
30/120 and seeking to remedy the grievances set up in their bill herein; that there has been no loss of evidence and no change in the position of the parties or of any other person or persons by reason of any lapse of time in bringing this action."

For the reason that as shown by the evidence all members of Class A including the complainants, were guilty of laches in seeking to remedy the grievances set up in their bill of complaint, and by reason of said laches, the parties cannot be placed in statu quo, as they could have if said remedy had been promptly sought in this, to-wit:

That Class A and the members thereof received, during the period beginning with the adoption of the legislation of 1908 and ending with the time this suit was brought, substantial benefits, including the insurance protection, business and social advantages, and in many instances their beneficiaries were paid during said period the full amounts respectively, of the insurance carried by them, all of which benefits were in part or in whole, due to the adoption of the legislation of 1908, the installment of Class "B" thereunder, the acquisition of new members of said society constituting

Class B and the continuation of new members made upon the theory that said legislation of 1908 would be permanently operative as a whole and that the same had been created, acquiesced in and approved by the members of Class "A," including complainants.

For the further reason that as shown by Paragraph 12 of said Findings of Fact of the Master's report all of said members of Class "A" including complainants had full opportunity to know of said legislation of 1908 and the practical operation of the same from and after its adoption, for the period of nearly 4½ years thereafter and "that at no time during said period of approximately 4½ years from and after said supreme session of 1908 was any objection or protest made to said legislation of 1908 or to any feature or provision thereof nor to said manner said plan so embodied therein was being administered."

IV. To so much of Paragraph 23 of said Findings of Fact contained in said Master's report as states;

"That the emergency fund was provided and is now used for the purpose of meeting death claims of members of Class
30/121 A when and after the current mortuary funds of said Class A known as the benefit fund shall have become exhausted and that it is so provided by Section 124 of the laws of said corporation."

For the reason that Section 124 does not provide that said emergency fund should be used or that the same was provided to be used for the sole purpose of meeting death claims of Class A when and after the mortuary funds of said Class A known as the benefit fund shall have been exhausted nor that the same was created to be used for the sole purpose of meeting Class A member death claims at all, all as appears from said section embodied in the constitution, laws, rules and regulations governing said Supreme Tribe and Subordinate Courts of Ben-Hur filed as an exhibit with said Master's report.

For the further reason that the right to transfer a proportionate amount of said emergency fund from Class A to Class B based upon the interest of transferring members as compared with those who do not transfer is not prohibited by said Section 124 nor by any other rule or regulation of said order; but on the contrary is permitted and authorized by said Section 124 as read and construed in connection with the other sections and provisions of said constitution, laws, rules and regulations bearing the same general subject.

That for the further reason that large numbers of policies or certificates of insurance have been issued from time to time by said Supreme Tribe of Ben-Hur to its members containing a provision to the effect that upon the arriving at the age of his expectancy as shown by the tables referred to in his certificate no monthly payments or assessments could thereafter be collected from said members holding said certificates, but the same should be paid out of the said reserve or emergency fund; that many of said certificates are still in force

and the holders thereof are entitled to have any monthly payments or assessments accruing against them, after attaining their age of expectancy, paid out of said emergency fund, said certificates containing said provision having been duly authorized by the laws of said society in force when they were issued, and that copies
30/122 of said certificates are set forth as exhibits numbered 15 to 24, inclusive, Vol. 1 of the Record, page 781, et seq.

V. To the first conclusion of law stated by the Master in his said report, to-wit:

"that the defense of laches set up in the answer is not sustained."

For the reason that upon the facts found by said Master in Paragraph 12 of the Finding of Facts contained in said report it is shown that the plaintiffs were guilty of laches; and for the further reason as testified by Roy H. Gerrard and John C. Snyder, called as witnesses on behalf of said defendants, the entire membership of said defendants Supreme Tribe of Ben-Hur was fully informed by the distribution of the official publication of said organization known as the Chariot and by printed circulars mailed to said members, copies of which are contained in the record and by personal visits of organizers and other officers and employees of said corporate defendant concerning the entire scope and effect of said legislation of 1908 and the manner in which the same was being construed and the manner in which the expense fund of said organization was being administered and that no protest or objection was ever made by any member of Class "A" until a short time before the institution of this suit.

VI. To the following portions of the second conclusion of law stated by the Master in his said report, to-wit:

"the members of Class B of the insurance department of the Supreme Tribe of Ben-Hur who have transferred from Class A by such act of transfer relinquish any right or interest which they had immediately before the transfer as Class A members in the emergency fund and they have no right to demand that any part of said emergency fund shall be taken from said emergency fund and placed in the mortuary fund of Class B and that the defendants have no power to make any such change of any part of the emergency fund to the mortuary fund of Class B and the plaintiffs are entitled to a decree enjoining the defendants from making or giving out that they intend to make any such charges."

30/123 & 124 For the reason that said portion of said conclusion of law No. 2 is not supported by the Finding of Facts upon which the same is based.

VII. The defendants further except to the failure of said Master to state as a conclusion of law upon the facts found and reported

by him that the complainants' bill was without equity and that the same should therefore be dismissed for want of equity.

Respectfully submitted.

CRANE & McCABE,
MILLER, SHIRLEY, MILLER & THOMPSON,
Solicitors for Defendants.

C. C. SHIRLEY,
Of Counsel.

30/125 In the District Court of the United States for the District of Indiana, November Term, 1914, January 28th, 1915.

In Equity.

Before the Honorable Albert B. Anderson, Judge.

No. 7.

GEORGE BALME et al., Complainants,

vs.

THE SUPREME TRIBE OF BEN-HUR et al., Defendants.

Come now the complainants by L. J. Crawford, Esq., their Solicitor, and file their exceptions to the report of the Master in Chancery herein in the words and figures following, to-wit:

Complainants' Exceptions to Master's Report.

The complainants except to the report of Edward Daniels, Esq., Master in Chancery, filed herein on January 8th, 1915, in the following particulars:

I. To the eighth finding of fact wherein it is found that the plan of reorganization of the order was adopted at the Supreme Session of 1908 after full discussion, criticism, explanation and consideration thereof, because while certain features of said plan were discussed at said session, neither the method of paying expenses nor the amount or adequacy of the provision for expense in the proposed class B rates were discussed, criticised, explained or considered, which fact is shown by the testimony of Dr. Gerard, Mr. Snyder and Mr. Landis.

II. To the eighth finding of fact wherein it is found that as a part of said plans adequate rates were provided to be paid
30/126 by persons who should thereafter become members of class B, because the provision for expense in said rates was not adequate or sufficient which fact is shown by the testimony of Dr. Gerard, Mr. Snyder, Mr. Iliff and Mr. Landis, and because there is no

testimony in the record that said expense provision in said rates was adequate or sufficient.

III. To the whole of the eighth finding of fact because such finding is immaterial and irrelevant to the issues joined herein in this, that by the bill of complaint herein no attack is made upon the plan adopted in 1908, but only upon the practice pursued by defendants after the adoption of such plan in disbursing the money contributed by and appropriated from the payments of members of class A and class B for expense purposes without an appointment or accounting for such disbursements as between said two classes; in this, that the continuation, by the legislation of 1908, of the expense or general fund under the name it had theretofore been designated by, did not direct or authorize the Executive Committee to disburse money from said fund for the use of each Class A and Class B, without apportioning or accounting for such disbursements as between said two classes; and in this, that by the legislation of 1908 no distinct and independent resolution, motion or law expressly providing for a common fund for class A and class B, or providing that all money contributed for expense purposes by the members of the two classes should be placed in a common fund and the expenses of both classes, paid from such fund without regard to the amount properly chargeable to the respective classes, was proposed, discussed, adopted or passed, as shown by the evidence and by the finding by the Master in his XXII finding of facts.

IV. To the tenth finding of fact wherein it is found that the rates provided by said plan for members receiving class B certificates were adequate, for the reason and on the testimony specified in Exception No. II.

V. To the twelfth finding of fact wherein it is found that the security of the insurance protection guaranteed by the certificate of plaintiffs and other members of class A who have not transferred to class B was materially enhanced by the installation of class B and the system of transfers incident thereto together with the practical operation of said plan, and wherein it is found that such members participated in all the benefits and advantages of said reorganization so strengthened and improved by the creation of class B and the legislation incident thereto, because the security of the insurance protection guaranteed by the certificates of plaintiffs and members of class A who have not transferred to class B was in no way enhanced by the installation of class B or the system of transfer incident thereto or practical operation of said plan, because such members did not derive or participate in any benefit or advantage as a result of the adoption of said plan, and because, so far as such members and the security of their certificates were concerned, the organization was not strengthened or improved; all of which is shown by defendants' answer to the second set of interrogatories and the testimony of Mr. Iliff and by the total

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absence of proof of any facts upon which a different finding could be based.

VI. To the thirteenth finding of fact wherein it is found that said plan adopted in 1908 was the only practicable known method of relieving said organization from existing financial embarrassment and probably dismembership and disintegration in the near future, because said plan contemplated and contained an insufficient provision for expense in the class B rates, and because a similar plan which contemplated and contained sufficient and adequate provision for expense in the class B rates would have been more practical and better than the one adopted, which facts are shown by the testimony of Dr. Gerard, Mr. Snyder, Mr. Landis, Mr. Iliff and Mr. Buttolph.

VII. To the thirteenth finding of fact wherein it is found that all the representations made and held out to the members of the Tribe of Ben-Hur respecting said plan or system by the defendant, Supreme Tribe of Ben-Hur and its officers, agents and employes, were in fact true, because it was represented by said defendants and its officers, agents and employes that the provision for expense in the rates of Class B were adequate and sufficient, which representations were in fact untrue for the reasons and upon the testimony specified in Exception No. II.

VIII. To the thirteenth finding of fact wherein it is
30/128 found that all expenditures made by defendant in furtherance of said plan and in carrying out the same were made for the purpose of preventing the dissolution and dismemberment of said organization on account of its heavy liability and approaching inability to meet its mortuary expenses, all of which expenditures were made necessary by the financially embarrassed condition of the membership known after July 1st, 1908 as Class A, and were made for the benefit of said class A members, because a large part of said expenditures were made for the purpose of securing and writing new business in class B, because complainant and the members of class A who had not transferred to class B have derived no benefit or advantage from the procuring or writing of such new class B business, and because the members of class A who do not transfer in the future will derive no benefit or advantage from the procuring or writing of such business, unless Section 92 of the laws of the defendant, The Supreme Tribe of Ben-Hur, remains unchanged, and unless and until the Executive Committee of said defendant transfer a proportion of the profits of class B for the use of members of class A, and because in no event can the members of class A who do not transfer in the future receive from class B anything more than the return of a very small part of the money contributed by them and applied by defendants to the use and benefit of class B; all of which is shown by defendants' answers to both sets of interrogatories and the testimony of Mr. Iliff.

IX. To the thirteenth finding of fact wherein it is found that said plan, including the creation of class B and the system of transfers thereto from class A, has in all respects resulted beneficially not only to said organization as a whole, but also to the members of class A who have not transferred to class B, for the reasons and upon the testimony specified in Exceptions Nos. V. and VIII.

X. To the fifteenth finding of fact wherein it is found that the expense burdens upon the members of defendant, The Supreme Tribe of Ben-Hur, are imposed with due regard to the relative benefits conferred, because said burdens are not so imposed, but the members of class A bear an expense burden much larger proportionately than the benefits they receive, while the class B members receive much larger benefits proportionately than the ex-
30/129 pense burden they bear, all of which is shown by defendants' Answer, by the defendants' answers to both sets of interrogatories, by the testimony of Mr. Iliff and by the total lack of proof of facts upon which a different finding could be based.

XI. To the eighteenth finding of fact wherein it is found that all expenditures made by said Supreme Tribe of Ben-Hur in the promotion, organization and maintenance of class B were made primarily for the benefit of the membership of said order as it existed on July 1st, 1908, thereafter known as Class A, and that said expenditures were all in fact beneficial to the membership of said order as it was then constituted, including plaintiffs and other members who did not transfer to class B, and that the adoption of the plan adopted in 1908 and the practical operation thereof have accomplished the purpose of saving, preserving and perpetuating class A and conserving the interest of its members, as well as securing upon a permanent basis advantages to such members, accessions to the order through their admission to class B, for the reasons and upon the testimony specified in Exceptions Nos. V, VIII and X.

XII. To the eighteenth finding of fact wherein it is found that the plan adopted in 1908 and the legislation incident thereto included some division and distribution of relative advantages and burdens between said respective classes embodied in said legislation, because said plan and said legislation included no provision for any division or distribution of relative advantages or burdens between said classes, as shown by defendants' Answers, by defendants answers to the first set of interrogatories, and by the testimony of Mr. Iliff.

XIII. To the nineteenth finding of fact wherein it is found that it is and has been at all times impossible for defendants, The Supreme Tribe of Ben-Hur, and its officers and Executive Committee charged with the administration of its affairs to keep and maintain an expense account setting forth the items of expense or relative portions thereof which should be borne by the respective classes or to apportion the total expense incurred during any given period so as to more equi-
30/130 tably distribute the burdens of maintaining said fraternal beneficiary society between said respective classes than the distribution of such burdens which automatically results

and has automatically resulted from the creation and maintenance of said general or common expense fund and the payment of all expenses therefrom as the same has been created and maintained and as its expenses have been paid therefrom by said Supreme Tribe of Ben-Hur and its proper officers and Executive Committee and that it is not and never has been practical or possible for said Supreme Tribe of Ben-Hur or its officers to measure in dollars and cents the pecuniary benefit resulting to class A or the members thereof from any particular item of expense or class of expenses incurred and paid as aforesaid, because it is and has been at all times since the creation of class B, practical and easy for the defendants to so keep the expense account of the order as to apportion all items of expense between the two classes with practical fairness to each class and the members thereof, and because the distribution which results and has resulted from the maintenance of a common expense fund for said two classes and the payment of all expenses of said two classes therefrom does not and has not resulted in fairness between said classes, but has resulted to the advantage of class B and the disadvantage of class A, all of which is shown by the testimony of Mr. Smethurst by the defendants' answers to both sets of interrogatories and by the testimony of Mr. Battolph, Mr. Landis and Mr. Iliff.

XIV. To the nineteenth finding of fact wherein it is found that all expenses incurred and paid in the organization and maintenance of class B have resulted beneficially to class A and the members thereof, for the reasons and upon the testimony specified in Exceptions Nos. V, VIII and X.

XV. To the nineteenth finding of fact wherein it is found that aside from the method of paying all expenses of both of said classes from a common fund, there is only one other plan which could be applied in this case so as to result in even approximate apportionment of benefits according to benefits received, and that is a classification of expenses in such manner as to group all items of like character in separate columns and the apportionment of certain of these aggregate items of expenses between classes A and B according to mean membership of respective classes and the apportionment of
249 131 certain other aggregate items according to mean insurance in force in said classes A and B, as determined in each case by the administrative officers of said defendants, because there are many items of expense disbursements of said defendant which do not benefit the members of the respective classes in proportion either to the respective membership or the respective protection in force in said classes, because such an apportionment cannot and does not result in fairness as between the members of said two classes, but results to the advantage of the members of class B and to the disadvantage of the members of Class A, and because an apportionment of each item of the expense disbursement of said defendant according to the character of the item and the benefit received by the members of the respective classes from the disbursement results and will result in fairness and justice to all members, all of which is shown by the testimony of Mr. Smethurst, by the defendants' answers to both sets of

interrogatories and by the testimony of Mr. Buttolph, Mr. Landis and Mr. Iliff.

XVI. To the nineteenth finding of fact, wherein it is found that the expense of securing new business in class B was properly chargeable to each of said two classes, because said expenses is not properly chargeable either to each of said classes or to both of said classes, but should be charged in its entirety to Class B, as is shown by the defendants' answers to the second set of interrogatories and by the testimony of Dr. Gerard, Mr. Snyder and Mr. Iliff.

XVII: To the refusal of the Master to find that the defendants, between July 15th, 1908, and April 15th, 1913, paid all expenses of class A and class B from a common fund without regard to the proportion of such expenses properly chargeable to each of said classes as requested in the sixth finding of fact requested by complainants, such practice having been admitted in defendants' Answer and shown by defendants' answers to the first set of interrogatories and by the testimony of Mr. Iliff.

XVIII. To the refusal of the Master to find that, upon the apportionment of expense disbursements between class A and Class B mentioned in the seventh finding of fact of complainants' proposed report, that there was a deficit in the class B expense fund on
30/132 January 7th, 1909, of $62,065.04; a deficit in said fund on January 7th, 1910 of $145,549.59; a deficit in said fund on January 7th, 1911 of $236,279.76; a deficit in said fund on January 7th, 1912 of $366,459.34; a deficit in said fund on January 7th, 1913, of $452,772.72; that on each of said respective dates there was, on the basis of said apportionment, a surplus in the class A expense fund, which surplus was in every case larger than the deficit existing on said respective date in the class B expense fund; and that interest at four per centum per annum on the deficiency in the class B expense fund as shown by said yearly deficits, to April 15th, 1913 amounts to $36,941.89, as requested in said seventh finding of fact requested by complainants.

XIX. To the refusal of the Master to find that the traveling expenses of the Medical Department will be incurred, in part, in the future in investigating and assisting in the litigation of disputed or questionable claims; and in the inspection of risks; and that the traveling expenses of the Supreme Chief will be incurred in the future in securing new business in class B, all of which was requested in the eighth finding of fact requested by complainants, and as shown by defendants' answers to the second set of interrogatories and by the testimony of Mr. Iliff and Dr. Gerard.

XX. To the third conclusion of law because the same is not supported by the findings of fact or the evidence, but is against the evidence and the findings and the law.

XXI. To the refusal of the Master to find the first, second, third, fourth, fifth, sirth and seventh conclusions of law requested by complainants.

Respectfully submitted,

L. J. CRAWFORD, JR.,
Solicitor for Complainants.

30/133 In the District Court of the United States for the District of Indiana, May Term, 1915, July 1st, 1915.

In Equity. No. 7.

Before the Honorable Francis E. Baker, Circuit Judge.

GEORGE BALME et al.

vs.

THE SUPREME TRIBE OF BEN-HUR et al.

Decree.

This cause came on to be heard on this first day of July, 1915, and during the progress of the argument on motion of the defendants said cause was reopened for the taking of additional evidence before the court, and the same was this day taken before the court and such evidence is hereby ordered transcribed and filed in the office of the Clerk of this court as a part of the evidence in this cause.

And the court now overrules exceptions numbered 20 and 21 filed by the complainants to said master's report, and sustained exceptions numbered 6 and 7 filed by defendants to said report. The court has not considered and makes no ruling upon the other exceptions filed by complainants and defendants, for the reason that said other exceptions all go to questions of fact which are not considered by the court to be relevant to the decision of this cause.

And thereupon, upon consideration thereof, it is Ordered, adjudged and decreed by the court as follows, viz: That complainants' bill of complaint be dismissed for want of equity at complainants' costs. All of which is finally ordered, adjudged and decreed by the court; and complainants now move orally for a rehearing and an apportionment of the costs herein.

30/134 In the District Court of the United States for the District of Indiana, May Term, 1915; September 25, 1915.

In Equity, No. 7.

Before the Honorable Francis E. Baker, Circuit Judge.

GEORGE BALME et al.

vs.

THE SUPREME TRIBE OF BEN-HUR et al.

The motions of the complainants for a rehearing and an apportionment of the costs having been duly considered by the Court, are now severally overruled.

In the District Court of the United States for the District of Indiana.

I, Noble C. Butler, Clerk of the District Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of Bill of Complaint filed April 16, 1913; Answer to Complainants' Bill of Complaint filed May 26, 1913; Order of Reference to Master in Chancery on July 9th, 1913; Master's Report filed January 8, 1915; Defendants' exceptions to Master's Report, filed January 25, 1915; Complainants' exceptions to Master's report, filed on January 28th, 1915; Decree dismissing Bill, etc., made and entered of record on July 1, 1915; and, the Overruling of the Complainants' Motions for a rehearing and an apportionment of the Costs made and entered of record on September 25th, 1915, in the cause of Balme, et al., vs. Supreme Tribe of Ben-Hur, in Equity, No. 7, as the same appears of record in my office.

Witness my hand and the seal of said Court, at Indianapolis, in said District, this 13th day of October, 1916.

[SEAL] NOBLE C. BUTLER,
Clerk.

30/135 In the District Court of the United States for the District of Indiana.

No. 7. Equity.

GEORGE BALME et al.

vs.

SUPREME TRIBE OF BEN-HUR et al.

Statement of Costs Taxed.

Clerk	77.60
Marshal	17.67
Docket fee	20.00
Master	1,000.00
R. Evans Sten'r. pd. by deft	377.25
R. Evans Sten'r. due from deft	320.95
R. Evans Sten'r. due plff	77.26
	1,890.73

I, Noble C. Butler, clerk of the District Court of the United States for the District of Indiana, do hereby testify that the above and foregoing is a full and true statement of the costs taxed in the above entitled cause as the same appears of record in my office.

Witness my hand and the seal of said Court, at Indianapolis, in said District, this 28th day of October, 1916.

[SEAL] NOBLE C. BUTLER,
Clerk.

30/136 DISTRICT OF INDIANA:

I, Noble C. Butler, Clerk of the District Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of Bill of Complaint filed April 16, 1913; Answer to Complainants' Bill of Complaint filed May 26, 1913; Order of Reference to Master in Chancery on July 9th, 1913; Master's Report filed January 8, 1915; Defendants' exceptions to Master's Report, filed January 25, 1915; Complainants' exceptions to Master's report, filed on January 28th, 1915; Decree dismissing Bill, etc., made and entered of record on July 1st, 1915; and, the Overruling of the Complainants' Motions for a rehearing and an apportionment of the Costs made and entered of record in said Court on September 25th, 1915, in the cause of Balme, et al., vs. Supreme Tribe of Ben-Hur, No. 7, In equity, as the same appears of record in my office.

Witness my hand and the Seal of Said Court, this twentieth day of January, 1917.

[SEAL]

NOBLE C. BUTLER,
Clerk.

DISTRICT OF INDIANA:

I, Albert B. Anderson, Judge of the District Court of the United States for said District, do certify that at the date of the foregoing Certificate, Noble C. Butler was, and now is, the Clerk of the District Court of the United States, for said District, and that his attestations aforesaid is in due form of law.

Witness my hand, this 20th day of January, 1917.

ALBERT B. ANDERSON,
Judge.

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EXHIBIT "B."

STATE OF INDIANA,
County of Marion.

Marion Superior Court.

No. —.

AURELIA J. CAUBLE

vs.

SUPREME TRIBE OF BEN HUR.

Complaint.

Come now the plaintiff, Aurelia J. Cauble, and avers that the defendant is a corporation under the laws of the State of Indiana for the purpose of insuring the lives of its members.

Plaintiff says that on the 19th day of February, 1900, the defendant issued to Peter C. Cauble its two certificates of insurance in the sum of nine-hundred dollars ($900.00) by the terms of which it promised and agreed to pay unto the plaintiff upon the death of the said Peter C. Cauble a sum of nine-hundred dollars ($900.00) on each of said certificates.

Copies of said certificates marked respectively exhibit "A" and exhibit "B" are attached hereto and by reference are hereby made a part of this complaint.

Plaintiff says that the said Peter C. Cauble died on the 10th day of February, 1918, and that she, plaintiff, is the widow of the said Peter C. Cauble.

Plaintiff says that on the 2nd day of March, 1918, notice was given in writing to the defendant of the death of said Peter C. Cauble whereupon defendant denied that the said Peter C. Cauble was a member of the defendant society at the time of his death and then and thereupon stated to plaintiff that said membership was lapsed for failure of the said Peter C. Cauble to pay certain extra assessments made by defendant against him.

32 Plaintiff says that the defendant ought to be and is stopped from claiming a forfeiture of each said certificates of membership because of failure to pay said extra assessments made against the said Peter C. Cauble for the following reasons, to wit:

Each of said certificates, which were whole certificates, provided as follows: "A monthly payment of one dollar for each whole certificate, or fifty cents for each half certificate, or one dollar and fifty cents for one and one-half certificate, or two dollars for a double certificate, will be due on the first day of each month and must be paid to the scribe of the court on or before the 25th day of each month, without notice, and no extra monthly payment will be called for while the regular monthly payment, together with the surplus fund is sufficient to meet the mortuary claims."

Plaintiff says that the defendant in about the year —, the exact time being unknown to the plaintiff, enacted a by-law by the terms of which it was provided that the society should have two classes of members to be known as class "A" and class "B" respectively, and that those persons who were members of the society preceding the enactment of said law and who were free from all physical disabilities might transfer into said class "B"; that by said amended law it was further provided that upon the transfer of any member to class "B" there should be transferred from the funds of the society as originally maintained a proportionate part of said funds for the sole use of class "B"; that at the time of enactment of said law the defendant had a mortuary fund of — for the payment of claims of members

33 who should die and a surplus fund of $— for the payment of claims in event of the insufficiency of assessments as provided for in said contracts; that upon the creation of said class "B" many members of the society who were physically acceptable at the repeated urgent solicitation of the officers of said society transferred from class "A" to class "B"; that thereupon the officers of the society transferred from the original funds of said society large sums of money for the sole use of the members of class "B"; that from time of the creation of said class "B" until the date of the forfeiture of the certificates of the said Peter C. Cauble there had been — members transferred into said class "B" at the said solicitation of said officers, who during said time transferred — dollars from the original mortuary fund of said society and — dollars from the original surplus fund of said society to funds for the sole use and benefit of the members of class "B."

Plaintiff further says that subsequent to the time of the creation of said class "B" the officers and agents of the society sought by all means within their power, to wit: by personal interviews, circular letters, and through the medium of the officers of the local lodges of defendant to reduce the membership of class "A" by inducing members to enter class "B," and throughout all such time wholly failed, neglected and refused to solicit new memberships for class "A," so as to maintain an average as to ages in said class, thereby discriminating in favor of said class "B."

Plaintiff says that the sums so transferred by the officers of said society for the benefit of class "B" was the property of the members so

constituting the society before the creation of said class "B";
34 that said funds so accumulated were trust funds for the benefit of all members persevering in class "A," and that said funds were indivisible and not apportionable to withdrawing members, and that it was not within the power of the society to enact the rights, properties and interests of the class "A" members in and to said funds, and that the amended law of the defendant undertaking to so apportion the said funds was null and void and of no effect, and plaintiff further says that the act of the society in transferring said funds in pursuance of said amended law was equally invalid.

Plaintiff says that the mortuary claims of class "A" members from the time of the creation of said class "B" up until the time of the levying of the assessments on account of which the certificates of Peter C. Cauble were forfeited amounted to — dollars; that the regular monthly assessments collected from said class "A" members throughout that time amounted to — dollars; that the mortuary fund of the society before the withdrawal of or transfer of any of the members of the society to class "B" amounted to — dollars; and that the surplus fund of the society before the withdrawals of or transfer of any of the members of the society to class "B" was — dollars.

Plaintiff does not know the exact amounts of the several funds so referred to and for that reason no more specific averments are made, but plaintiff says that the mortuary fund and surplus fund available for the payment of class "A" claims, counting the funds so unlawfully transferred by defendant and the regular assessments provided for in said certificates and collected by defendant, were more than sufficient to meet all mortuary claims of class "A" members,
35 by many thousands of dollars, and that there was no necessity for the payment of any extra assessments.

Plaintiff says that immediately preceding the forfeiture of said certificate the defendant demanded of the said Peter C. Cauble the sum of — dollars for the regular assessment then due and — extra assessment which had been levied upon the said Peter C. Cauble; that the said Peter C. Cauble then and thereupon refused to pay and said extra assessments so levied upon and demanded of him at said time tendered to said society the regular assessment provided for in each of said certificates, which tender was then and there refused by said society and the Membership of said Peter C. Cauble in said society was thereupon terminated and cancelled for failure to pay said extra assessments.

Plaintiff says that both she and said Peter C. Cauble have each performed all of the conditions of each certificate except as herein otherwise specifically aver-ed.

Wherefore the plaintiff prays judgment as against the defendant for two thousand dollars ($2,000.00) with interest and costs and all other proper relief.

GUILFORD A. DEITCH,
FRANK G. WEST,
Attorneys for Plaintiff.

36 STATE OF INDIANA,
County of Marion:

Marion Superior Court.

No. —.

AURELIA J. CAUBLE

vs.

SUPREME TRIBE OF BEN-HUR.

Interrogatories to Defendant.

The plaintiff submits the following interrogatories along with the complaint herein and asks that the defendant be ruled to answer the same under oath within a reasonable time.

I.

How many members, classified as to amounts of certificates, transferred each year following the establishment of class "B" into class "B" up to and including the time Peter C. Cauble's membership was lapsed?

II.

When was the Peter C. Cauble's membership marked lapsed on the records of defendant?

III.

For refusal to pay what particular assessment was his membership lapsed?

IV.

For refusal to pay particular amount was his membership lapsed?

V.

When last did Peter C. Cauble pay any assessment to defendant?

VI.

What was the amount of the last assessment paid by Peter C. Cauble?

37 VII.

What assessment-, besides the regular monthly assessment, were levied as against members of class "A" in each of the years following the establishment of class "B"?

VIII.

Give dates when each of these extra assessments were levied and the amount of each extra assessment as against each holders of half certificates, full certificates, one and one-half certificates and double certificates?

IX.

By order of whom where each of these extra assessments made?

X.

Has the defendant any record of the action of the society levying these extra assessments?

XI.

In what book or books, are the records of such actions preserved?

XII.

What was the amount of the mortuary fund of the society immediately preceding the creation of class "B" and before there were any transfers to such class "B"?

XIII.

What was the amount of society surplus fund at such time?

XIV.

What other funds did the society have at such time, giving the amount of each?

XV.

Give amount of all accrued and unpaid claims at such time.

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XVI.

What amounts have been transferred from the several funds of the society for the use and benefit of class "B" for each year since the establishment of class "B", giving the name of the fund from which transferred?

XVII.

What have been the amounts of death claims paid to members of class "A" for each of the several years since the establishment of class "B"?

XVIII.

Give the number of members of the society immediately preceding the establishment of class "B" and before there were any transfers to such class, classified according to amounts of certificates held by them.

XIX.

Give the number of members in class "A" for each of the years since the establishment of class "B", classified according to the amount of certificate held by them.

XX.

How many members during the year immediately preceding the establishment of class "B" were permitted to pay up their policies, classifying them according to amounts of their certificates.

G. H. DEITCH,
F. G. WEST,
Att'y. for Pl'ff.

39 EXHIBIT "C."

STATE OF INDIANA,
Montgomery County:

Montgomery Circuit Court.

No. —.

MARTHA MAY BROWN, HELEN B. BURROUGHS,

vs.

THE SUPREME TRIBE OF BEN HUR, JESSE F. DAVIDSON, SAMUEL E. VORIS, ROYAL H. GERARD, JOHN C. SNYDER.

Complaint of Policy.

Plaintiffs in the above entitled cause, complain of the defendants and allege that the defendants, the Supreme Tribe of Ben Hur, is a corporation duly organized under the laws of the State of Indiana. That said defendants first incorporated on January 9th, 1894, as a corporation for the organization of a social, charitable and benevolent secret organization and one of its particular objects for which it was organized was to insure the lives of its members as might be entitled to have their lives insured under the rules and regulations of the order, for the benefit of certain relatives and dependants of the insured, as might be restricted in the by-laws and such corporation was incorporated, pursuant to an act approved May 13th, 1852, by the legislature of the State of Indiana.

That said defendant company reincorporated under the same name on February 21, 1900, pursuant to an Act of the Legislature of 1899, and in said reincorporation, retained a right to continue and issue policies upon its members and that in June, 1915, said defendants reincorporated an amendment to their reincorporation articles and pursuant to all of said incorporated articles and said amendment continued to engage in the writing and issuance
40 of life insurance policies on the lives of its members.

Plaintiffs further allege that on the 20th day of December 1895, the defendant Supreme Tribe of Ben Hur, in consideration of the payment to it of a premium of One (1) Dollar monthly, and other payments hereinafter set out, executed to Annie Brown a policy of insurance on the life of Horace G. Brown for $2100.00 a copy of which is filed herewith, made a part of this complaint, marked "Exhibit A".

That afterwards, to wit: on the 3rd day of March, 1916, this defendant, at the written instance and request of said Horace G. Brown, changed the beneficiary from the name of Annie Brown to these plaintiffs, Martha May Brown and Helen B. Burroughs, which change of beneficiary is attached to and made a part of the policy attached to this complaint.

That said Martha May Brown was, on March 3rd, 1916, the wife of Horace G. Brown and said Helen B. Burroughs was the daughter of Horace G. Brown.

That said Horace G. Brown died on the 30th day of December, 1918, and that until his death, plaintiff, Martha May Brown was the wife of said Horace G. Brown.

That on the 17th day of February, 1919, these plaintiffs notified defendant, Supreme Tribe of Ben Hur of the death of Horace G. Brown and asked for blank forms upon which proof of said death might be made as required under the by-laws of said defendant company, or by the policy and application made or held by the deceased.

That on the 19th day of February, 1919, said defendant Company notified these plaintiffs that it denied liability under the aforesaid policy and refused to pay benefits in any amount upon the death of Horace G. Brown, and refused to send blank forms for proof of death.

41 That these plaintiffs performed all the conditions of said policy and of the by-laws of said company within their power to perform. That defendant company has not paid such sum or any part thereof and the same is now due.

Plaintiffs allege that other defendants than the defendant corporation were and are the duly qualified, appointed and acting officers, directors, trustees and Supreme officers of said company and that said other defendants were such qualified and acting officers of said company during the period of time herein complained of and referred to in this complaint.

Your plaintiffs further allege that pursuant to the issuance of the said policy herein complained of and referred to, that the said decedent, Horace G. Brown, performed all of the conditions and re-

quirements of said policy required to be performed on the part of said decedent and also performed all the conditions required of him to be performed by each and all of the by-laws of said defendant company.

Plaintiffs further allege that they are informed and believe and allege it to be the truth that there is only one copy of the by-laws of the defendants, which were the by-laws of said company at the time of the issuance of said policy, in existence and that the same is in the possession and control of the defendant company and that these plaintiffs have not access thereto and cannot at this time file a copy of the same with this complaint, but allege that upon securing permission in this case from the defendants, they will make a copy thereof a part of this complaint and that they will ask permission to do the same in this cause and that said copy will be filed, made a part of this complaint, and marked "Exhibit B."

42 Plaintiffs allege that the by-laws of said defendant company among other things, required that every person taking out a policy shall pay a stipulated amount as an expense for the actual securing of the policy and the issuance of the same and a medical examination as would entitle them to membership to the various courts and entitle them to the right of a policy all of which expenses, in addition to other payments to be made, said deceased, duly paid to the proper parties. That in addition to the foregoing expenses, the by-laws provided that every policy holder on his policy shall pay into the treasury of the defendant company a sum of 75c. each six months, or $1.50 per annum, which said sum is to go into the expense fund of said company to be used by the said defendant company for the purpose of procuring additional policy holders and further the interests of said insurance department of said defendant company, so that in addition to said amount, the by-laws further provide that the insured shall pay a sum of $1.00 per month, or, to wit, the sum of $13.00 per annum into the treasury of said defendant company, which said sum so paid in shall be paid into a fund known as the beneficiary fund from which said fund all liabilities on the policies in the case of benefits on death loss or maturity of the policy should be paid from out of said fund and which said fund should be known as the beneficiary fund.

Your plaintiffs allege that this decedent made all of said payments so required to be made at the time required to be made and in the manner required by the by-laws of the defendant company and the terms of this policy, up to and including the month of October, 1916, when the said defendant company refused to accept any of such payments and plaintiffs complain that at all times since

43 the date, defendant company refused to accept said payments.

That the decedent has tendered and offered to pay in lawful money of the United States all payments required to be paid by the by-laws and in the terms of the policy at the time and places in which the same are required to be paid, but that said defendant company has refused to take the same and notified the decedent that they had refused to take any more payments on the same and that the said defendant company would refuse to take any further payments on and after the month of October, 1916.

Your plaintiffs further allege that among other things the by-laws provided that, if necessary, the officers of the defendant should have the right to double the amount of the assessments which are made of the beneficiary fund.

Your plaintiffs further allege that in the month of October, 1916, and for some time prior thereto, the beginning of which these plaintiffs are not now advised, all of the defendants conspired and planned to defeat this policy and others of its class and to render them worthless and in order to do so, they unlawfully, wrongfully, negligently, willfully and purposely did and refrained from doing the things which would ultimately bring about said conditions and that the things so done and the things so refrained from doing by said defendants, these plaintiffs charge to be as follows:

Your plaintiffs allege that there was a great amount of money in the expense fund and a great amount was coming in each year, to-wit: several hundred thousand dollars, which was to be used for the purpose of getting new members in said company. That all of the defendants willfully, negligently set about to cause said fund to diminish and to squander and spend the same.

44 That they wrongfully employed useless and worthless employes and paid them extravagant salaries for the purpose of depleting said fund. That they wrongfully and unlawfully paid themselves out of said funds vast and enormous salaries and performed no services whatever, which inured to the benefit of the policy holders in said company at said time who had a right to have the same spent for their benefit. That the defendants and all of them willfully, wrongfully and unlawfully conspired to start another class of insurance in said company at said time and procure all future policies to be taken in the other class and of which class, the then present policy holders should not participate in any of its proceedings or doings. That they wrongfully and unlawfully solicited and procured the policy holders in the class in which this decedent was listed to withdraw from said class and to stop payment of any moneys into the beneficiary fund and into the expense fund out of which this decedent was participating and caused them to take policies in the new class and stop their policies in this class and wrongfully and unlawfully took such pro rata amounts of moneys as were in the beneficiary fund and transferred same over to the account of said transferred membership into the other class, out of which this decedent could not participate under any circumstances.

Plaintiffs allege that it costs a great amount of money to advertise, solicit and start an insurance company and to start a new class.

What the defendants wrongfully and unlawfully and fraudulently used the moneys paid in by this decedent and other policy

45 holders belonging to the same class with this decedent which was paid in for expense money to employ employes and to pay for the solicitation of other persons to join and enter the new class and employed said persons for the purpose of keeping any new persons from joining the class in which this decedent was interested.

That these defendants and all of them conspired and wrongfully, unlawfully and fraudulently caused money to be taken out of the beneficiary fund and expense fund to which this decedent had paid money for the purpose of compromising and settling the claims and contentions of other policy holders of said company, to prevent law suits from being filed against them and that defendants and all of them, unlawfully, wrongfully and fraudently did do all of the things charged herein, for the express purpose and intent of causing each of these plaintiffs loss in the value of said decedent's policy and the loss and damage to them in their insurance and their said contracts, as shown by said policy, and that the said defendants conspired and unlawfully and wrongfully refrained from increasing the rate of premiums to be paid by policy holders in the class in which these plaintiffs were participants, knowing that by so doing, it would be easier to destroy the contract of this policy and prevent others from entering said class.

Your plaintiffs allege that by reason of said fraudulent, wrongfully and unlawful acts committed by these defendants and by reason of their unlawful, fraufulent and wrongful acts in refraining from doing those things herein which they should have done, the funds so created by the decedent and others in the class in which these plaintiffs would have participated became wasted and de-
46 stroyed and said class became totally and wholly insolvant and said beneficiary fund became wholly and entirely depleted. That these plaintiffs and the decedent did not know that said class was becoming depleted and that said defendants were aiming to deplete the same.

That the decedent kept on paying money according to contract into said company during all the period of time in which the defendants conspired to destroy the same.

That these defendants well knew at said time, that these plaintiffs and the decedent were ignorant of what defendants were attempting to do and knew they were attempting to deplete said funds and knew that in a very short time, the said policy would be worthless and for the purpose of causing the same to become worthless and as trick and device for deceiving these plaintiffs and others and keeping them ignorant of the fact that the policy would become worthless by the methods employed, the defendants caused in each issue of a paper which the defendants were at said times editing and causing to be sent out to its various members known as "The Chariot," certain advertisements in substance as follows; Notices of the following nature: "The Ben-Hur has never gone back on a contract and never will," and they continued these advertisements in said paper during the period of time in which they are charged of attempting to wreck the class in which this decedent was placed and to render the funds therein insolvent, all of which acts herein charged as having been done by the defendants were unlawful, fraudulent and wrongful and the refraining from doing of such acts as herein charged was wrongful and fraudulent.

47 Your plaintiffs further allege that had the defendants used their efforts for which they were paid in increasing the membership in*t* this class and increasing the membership fee, which they had a right to do, they could have kept alive this said policy and the same would have been of full value at this time.

Plaintiffs charge and allege that when the decedent took the policy herein set forth in said company, that the defendants, all of them informed the decedent that they were giving this decedent and others special inducements in policies for the purpose of the advertisement and help it would give to the defendant com,any in procuring other policies which would not be as favorable to the policy holders later on and that it was worth a considerable amount in value to have these policy holders be a representative class in taking their said policies and assisting said defendant company to thrive and build up a large insurance business and your plaintiffs allege and charge that said facts are true.

Your plaintiffs allege that this decedent did during the month of October, 1916, tender payments to defendant company, required to be paid by the by-laws and the terms of the policy. That the defendants wrongfully, fraudulently and unlawfully refused to take said payments and no-ified decedent and others that their policies were of no value whatever. That they had no interest in said company and that they would no longer accept any premium or expense money.

Plaintiffs further allege that at the time decedent made the contract for the said policy and from that time continuously to
48 the month of October, 1916, this decedent was a member in good standing of said defendant company in the degree known as the Court Degree of Simonid*ies* Court #1, of the Tribe of Ben Hur and entitled as such member to take out the policy herein sued upon and plaintiffs further allege that from the month of October 1916, until the death of decedent, the decedent did, or offered to do, everything required of him by the constitution and by-laws of said defendant company at all times and paid or tendered all of the payments required by said company to entitle him to remain a member in good standing and to make this policy valid, but that he was prevented from making said payments or doing said acts by the unlawful, fraudulent and wrongful acts of all of these defendants as herein set out.

Plaintiffs further allege that the moneys so spent by all of the defendants belonged to the various funds which were to inure to the benefit of these plaintiffs and which would have inured to their benefit had it not been so spent and which money so spent in the manner alleged in this complaint was spent for purposes of profit and gain to the said defendant corporation and to all others insured in all of the other classes excepting the class to which this decedent belonged and that said defendant company and all others insured therein benefited and gained exceedingly in the amount spent.

Wherefore, plaintiff prays the court for a judgment in the sum of $2,100.00 against all of these defendants and for costs and all other proper relief in the premises.

BACHELDER & BACHELDER,
Attorneys for Plaintiffs.

49 EXHIBIT A.

No. 4950. $2,100.00.

The Temple of the Supreme Tribe of Ben-Hur.

Crawfordsville, Indiana, U. S. A.

This certificate, issued by the Supreme Tribe of Ben Hur, Witnesseth, that Horace G. Brown of Crawfordsville, aged 35 years, a Court Degree Member of Simonides Court #1, of the Tribe of Ben Hur, located at Crawfordsville, in the State of Indiana, is entitled to all the rights, benefits, and privileges of Beneficial Membership in the Tribe of Ben Hur, and to designate as his beneficiary under this Certificate Annie Brown, bearing to him the relationship of Wife.

To Whom shall be paid upon satisfactory proof of his death the sum of Twenty-one Hundred Dollars from the Benefit Fund of the Supreme Tribe of Ben Hur in accordance with the Laws, Rules and Regulations of the Order. In the event of the holder of this Certificate having reached the age of his expectancy of Thirty-two years and two months from and after the date of this Certificate and having paid all assessments and complied with all the Laws, Rules and regulations of the Order, then this Certificate shall become fully paid and non-assessable except for Court dues and per Capita Tax.

This certificate is issued to, and to be construed and controlled by the Laws, rules and Regulations of the Order.

In witness whereof, the Supreme Tribe of Ben Hur has caused this Certificate to be signed by its Supreme Chief and Supreme Scribe and the Seal thereof, attached, in the City of Crawfordsville, County of Montgomery, State of Indiana, this Twentieth day of December, One Thousand Eight Hundred and Ninety-Five.

L. J. DICKASON,
Supreme Chief.

Attest:

F. L. SNYDER,
Supreme Scribe.

I hereby accept this Certificate on the conditions named above.

Witness:

____ ____,
Member.

We, the undersigned Chief and Scribe of Simonides Court No. 1 of the Tribe of Ben Hur, so hereby countersign and attach the Seal of this Court hereto, this 20th day of December, 1895.

JOHN L. WILLIAMS,
Chief.

[Seal Simonides Court No. 1, T. B. H., Instituted March 1, 1894.]

Attest:

LOUIS M. MAINS,
Scribe.

[Seal Supreme Tribe of Ben Hur. 1894. Organized Jan. 8.]

On Back:

I, Horace G. Brown, to whom the within Certificate was issued do hereby revoke my former direction as to the payment of the Benefit Fund due at my death, and now authorize and direct such payment to be made to Helen E. Brown bearing relation to me of daughter. Witness my hand and seal this 3rd day of March, 1906.

HORACE G. BROWN. [SEAL.]

Attest:

LAURA A. SCOTT. [SEAL.]

This direction as to beneficiary void. See later change under date of 3/2/16.

Attached to Back:

Change of Beneficiary.

I, Horace G. Brown, to whom the within certificate was issued, do hereby revoke my former direction as to the payment from the Benefit Fund due at my death, and now authorize and direct such payment to be made to Marcha May Brown, $1,050 and Helen B. Burroughs $1,050 equally divided.

Dated at Crawfordsville this 26th day of Feb. 1916.

HORACE G. BROWN. [SEAL.]

Attest:

LAURA A. SCOTT,
[SEAL.] *Scribe.*

The Supreme Tribe of Ben-Hur hereby consents to the above change of Beneficiary. Dated at Crawfordsville, Indiana, this 3rd day of March 1916.

[SEAL.]

JNO. C. SNYDER,
Supreme Scribe.

51 EXHIBIT "D."

STATE OF INDIANA,
County of Montgomery:

Montgomery Circuit Court. — Term, 1918.

O'NEAL WATSON, HARRY M. VANCE, ROBERT MCMAINS, ELIZA H. WATSON, Sidney Speed, William C. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams, John H. Rice, Theodore M. Sharp, Robert T. Davis, George Nellist, Margaret C. McMains, John W. Hurley, Henry T. Schenck, Horace C. Brown, Thomas J. Houlehan, Frank S. Van Dyke, George C. Fox, Arnina J. Cox, Elizabeth Clemson, Thomas J. Hart, Margaret Speed, Mary E. Osburn, Edwin A. Broker, James Walter Grimes, Vona Dickerson, James W. Dickerson, John C. Wingate, Anna E. Young, Wesley W. Young, Plaintiffs,

52 VS.

THE SUPREME TRIBE OF BEN HUR, JESSE F. DAVIDSON, SAMUEL E. VORIS, ROYAL H. GERARD, JOHN C. SNYDER, Defendants.

53 Plaintiffs in the above entitled cause complain of the defendant, The Supreme Tribe of Ben Hur, and allege that the said defendant is a corporation duly organized under the laws of the State of Indiana; that said defendant first incorporated on January 9, 1894, as a corporation for the organization of a social, charitable and benevolent secret organization and one of its particular objects for which it was incorporated was to insure the life of such of its members as might be entitled to have their lives insured under the rules and regulations of the Order for the benefit of certain relatives and defendants of the insured as might be restricted in the by-laws. And said corporation was incorporated pursuant to an act approved May 13th, 1852, by the Legislature of the State of Indiana.

That said defendant company re-incorporated under the same name on February 21, 1900, pursuant to an Act of the Legislature of 1899 and in said reincorporating, retained a right to continue and issue policies upon its members and that in June, 1915, said defendants reincorporated an amendment to their reincorporation and pursuant to all of said Incorporation Articles and said Amendment, continue to engaged in the writing and issuance of life insurance policies on the life of its members.

Your plaintiffs and each of them allege that each of said plaintiffs, from the time of the first organization up to and including the 14th day of May, 1902, were members of the said lodge of Ben Hur and were each entitled to have their life insured in said defendant company and that each of said plaintiffs did have their life insured in said company and said defendant company did at various
54 times issue policies upon the lives of each of the plaintiffs in this cause of action, said policies being made payable to a

beneficiary which came within the requirements of the rule and by-laws of said defendant Company, pertaining thereto.

That during said time, the said defendant company issued and put out three forms of contract policies, each of which forms will be set out in this complaint and made a part hereof.

That form No. 1 so issued by said defendant company reads in words and figures, omitting the blank space to be filled in as follows, to-wit:

No. —. $—.

The Temple of the Supreme Tribe of Ben Hur of Crawfordsville, Indiana, U. S. A.

This certificate, issued by the Supreme Tribe of Ben Hur, Witnesseth that —— ——, of ——, Aged — Years, a Court Degree Member of Simonides Court No. 1 of the Tribe of Ben Hur, located at ——, in the State of I——, is entitled to all the rights, benefits and priveliges of Beneficial Membership in the Tribe of Ben Hur, and to designate as his beneficiary under this Certificate —— —— bearing to — the relationship of ——. To whom shall be paid upon satisfactery proof of H— death the sum of —— Dollars from the Benefit Fund of the Supreme Tribe of Ben Hur in accordance with the Laws, Rules and Regulations of the Order. In the event of the holder of this Certificate having reache- the age of h— expectancy of — years and — months, from and after the date of this certificate and having paid all monthly payments and complied with all the Laws, Rules and Regulations of the Order, then this Certificate shall become fully paid and non assessable except for Court dues and Per Capita Tax.

This certificate is issued subject to and to be construed and controlled by the Laws, Rules and Regulations of the Order.

In witness whereof, the Supreme Tribe of Ben Hun had caused this Certificate to be signed by its Supreme Chief and Supreme Scribe and the Seal thereof attached in the City of Crawfordsville, County of Montgomery, State of Indiana this — day of ——, One Thousand Eight Hundred and Ninety —.

D. W. GERARD,
Supreme Chief.

Attest:
F. L. SNYDER,
Supreme Scribe.

I hereby accept this Certificate on the conditions named above.

Witness:

—— ——,
Member.

55 We the undersigned Chief and Scribe of —— Court, No. — of the Tribe of Ben Hur, do hereby Countersign and attach the seal of this Court hereto, this — day of ——, 189—.

[SEAL.] S. H. CREIGHTON,
Chief.

Attest:
LEWIS McMAINS,
Scribe.

Form No. 2 reads in words and figures, omitting the blank spaces to be filled in, as follows, to-wit:

The Temple of the Supreme Tribe of Ben Hur, Crawfordsville, Indiana, U. S. A.

No. —.

This certificate, issued by the Supreme Tribe of Ben Hur Witnesseth that —— ——, of ——, aged — years, a Court Degree Member —— Court —— of the Tribe of Ben Hur, located at —— in the State of —— is entitled to all the rights, benefits and privileges of Beneficial Membership in the Tribe of Ben Hur and to designate as H— beneficiary under this Certificate —— —— bearing to h— the relationship of ——. To whom shall be paid upon satisfactory proof of h— death an amount not exceeding the sum of —— Dollars from the Benefit fund of the Supreme Tribe of Ben Hur, or in the event of reaching h— expectancy of — years and — months from and after the date of this Certificate, the above sum shall be paid to the holder of this Certificate in ninety days thereafter. This period being designated as the time when a member shall be presumed to be totally disabled from maintenance and become dependent.

This certificate is issued subject to and to be construed and controlled by the Laws, Rules and Regulations of the Order.

In witness whereof, the Supreme Tribe of Ben Hur has caused this Certificate to be signed by its Supreme Chief and Supreme Scribe and the Seal thereof attached in the City of Crawfordsville, County of Montgomery, State of Indiana, this — day of ——, One Thousand Eight Hundred and ninety —.

JNO. J. CHASE,
Supreme Chief.

Attest:

F. L. SNYDER,
Supreme Scribe.

I hereby accept this Certificate on the conditions named above.

Witness:

—— ——,
Member.

We, the undersigned, Chief and Scribe of —— Court, No. — of the Tribe of Ben Hur, do hereby countersign and attach the Seal of this Court hereto, this — day of ——, 189—.

GEO. W. GRAHAM,
Chief.

Attest:
LAURA A. SCOTT,
Scribe.

56 Form No. 3, reads in words and figures, omitting the blank spaces to be filled in, as follows, to-wit:

No. —. $—.

The Temple of the Supreme Tribe of Ben Hur, Crawfordsville, Indiana, U. S. A.

This certificate issued by the Supreme Tribe of Ben Hur, Witnesseth, that —— —— of ——, aged — years, a Court Degree Member of —— Court #1 of the Tribe of Ben Hur, located at —— in the State of —— is entitled to all the rights, benefits and privileges of Beneficial Membership in the Tribe of Ben Hur, and to designate as h— beneficiary under this Certificate —— —— bearing to the relationship of ——. To whom shall be paid upon satisfactory proof of h— death the sum of —— Dollars (less any sums that may have been paid for physical disability on account of old age or for partial disability on account of accident, as hereinafter provided in this Certificate) from the Benefit fund of the Supreme Tribe of Ben Hur at the city of Crawfordsville, Indiana, in accordance with the laws, Rule and Regulations of the Order.

Old Age Disability. In event of the holder of this Certificate becoming physically disabled on account of old age after having reached the age of seventy years, and having complied with all the laws, Rules and Regulations of the Order, then upon receipt of proofs to be made upon the blanks of the Order that such member has become physically disabled on account of old age and upon approval of such proofs by the Board of Claims, a sum not exceeding one-tenth of the principal sum named herein shall be paid to such member within sixty days after receipt and approval of such proofs of disability and there shall be paid to him or her on the expiration of each year thereafter a like sum until the full principal sum named herein shall have been paid. Provided, always that if the member die before all the said installments shall have been paid the balance remaining unpaid at his or her death shall be paid to his or her beneficiary named herein. Provided however: that such member shall continue to pay his or her Court dues and per *capita* tax and monthly payments.

Partial Disability. If a holder of this Certificate shall lose by amputation, both legs at or above the ankle, both arms at, or above the wrist, or one leg and one arm in said manner or shall lose the sight of both eyes resulting in total blindness, said member shall received

within sixty days after accepted proof thereof, one-half of the amount of this Certificate as provided by the laws of the Order.

If said member shall lose by amputation one leg at, or above the ankle, or one hand at or above the wrist, he or she shall receive within sixty days after accepted proof thereof, one-fourth of the
57 amount of this Certificate. Provided, however, that all the laws of the Order shall have been complied with, the required proofs furnished upon the blanks of the Order, of such Partial Disability, and the same has been approved by the Board of Claims. The balance remaining unpaid at the death of the holder of this Certificate shall be paid to his or her beneficiaries provided the member is in good standing in the beneficial department at the time of death and had complied with all the laws of this Order.

This certificate is issued subject to and to be construed and controlled by the Laws, Rules and Regulations of the Order, now in force, or which may hereafter be adopted. The application for membership is hereby referred to, and made a part of this contract.

In witness whereof, The Supreme Tribe of Ben Hur has caused this Certificate to be signed by its Supreme Chief and Supreme Scribe and the Seal thereof attached, in the City of Crawfordsville, County of Montgomery, State of Indiana, this — day of ——, One Thousand Nine Hundred —.

D. W. GERARD,
Supreme Chief.

Attest:
F. L. SNYDER,
Supreme Scribe.

I hereby accept this Certificate on the conditions named above and agree that my *m*ights and the rights of my Beneficiary shall be governed and controlled by the Laws, Rules, and Regulations of the Supreme Tribe of Ben Hur now in force or which may hereafter be adopted.

Witn*i*ss:

—— ——,
Member.

We, the undersigned Chief and Scribe of —— Court No. — of the Tribe of Ben Hur, do hereby countersign and attach the Seal of this Court hereto.

HARRY N. FINE,
Chief.

Attest:
SAURA A. SCOTT,
Scribe.

The signing of this Certificate by the Chief and Scribe of the Court is only for identification as a member of the Court and shall not be construed as affecting in any way the date of the beginning of the contract under this Certificate.

Your plaintiff allege that each of the plaintiffs procurred a policy in said defendant Company during said period of time herein referred to, on one or other of said three forms and that following is the number of the form to which said plaintiffs took their policies, together with the named of the beneficiaries, dates and amounts insured for and age and expectancy of said plaintiff, to-wit:

No. 14826.

Form.

Insured Sidney Speed: Form #1, Date, May 10th, 1897, beneficiaries, Maggie & Mable Speed: member of Simonides Court #1, aged 50 years, life expectancy 21 years, amount of insurance $900.00:

58

7714.

Insured, John O. Williams: Form #1, member of Simonidies Court #1, date April 24, 1896: age 40 years: beneficiaries, Ida M. Williams, amount $1,800.00; life expectancy 37 years, 10 months.

20538.

Insured Lavander C. White: Form #1: member of Simonidies Court #1: age 45 years, beneficiaries, William G. White: amount of insurance $1,200.00: life expectancy 24 years: date, February 11, 1898.

20537.

Insured William G. White: Form #1, member of Simonidies Court #1: age 47 years: beneficiaries, Lavander C. White: amount $1,100.00: life expectancy 23 years, 6 months: date February 11, 1898.

7788.

Insured Ida M. Williams: Form #1: Simonidies Court #1: age 38 years: beneficiaries, Hortense & Blanche Williams: amount of insurance $1,050.00: life expectancy 32 years, 2 months: date April 28, 1896.

15228.

Insured Thomas J. Hart (Harp): Form #1: Alamo, Indiana: age 43 years: beneficiaries, Claude P. Edna, Carrie Hart: amount $1,700.00: life expectancy 28 years 4 months: date of policy Jan. 11, 1896.

12464.

Insured Elizabeth Clemson: Form #1, Simonidies Court #1: age 47; beneficiary J. W. Clemson: amount of insurance $1,300.00; life expectancy 23 years 2 months: date January 5, 1897.

33129.

Insured Armena J. Cox: Form "1; Simonidies Court #1; age 51 years; beneficiaries Bettie B. Cox, Maggie L. Smith; amount $800.00; life expectancy 20 years, 4 months, date July 29th, 1899.

59 7943.

Insured George C. Fox: Form #1; Simonidies Court #1; age 29 years; beneficiaries Mattie V. Fox; amount $1,150.00; life expectancy 36 years; date of policy, May 6, 1896;

12586.

Insured William H. Williams: Form #1; Simonidies Court #1; age 44; beneficiaries Lena Williams; amount $1,600.00; life expectancy 25 years, 4 months; date of policy, January 12, 1897.

9159.

Insured John H. Rice: Form #1; Waveland Court #80; age 45 years; beneficiary Emma Rice $500.00; balance to Bertie, Nettie, & Guy Rice, equally. Amount of insurance $1,500.00; life expectancy 24 years, 6 months, date July 15, 1896.

7540.

Insured, Theodore M. Sharp: Form #1, Waveland Court #80; age 36 years; beneficiary, Louisa Sharp; amount $1,000.00; life expectancy 30 years, 9 months; April 13, 1896.

13284.

Insured, George Neilest: Form #1; Simonidies Court #1; age 51; beneficiary Magdalena Neilest: amount $900.00; life expectancy 20 years, 4 months; date January 30, 1897.

12200.

Insured Robert T. Davis: Form #1; Simonidies Court #1; age 41 years; beneficiary, Nellie A. Davis; amount of insurance $1,800.00; life expectancy 27 years, 10 months; date of policy, December 30, 1896.

12788.

Insured, Margaret C. McMains: Form #1; Simonidies Court #1; age 40 years; beneficiary, Robert McMains; amount $1,800.00; life expectancy 27 years, 10 months; date, January 19, 1897.

10613.

Insured Henry F. Schenck: Form #1; Simonidies Court #1; aged 42; beneficiary, Fay O. & Myrtle B. Schenck; amount $1,700.00; life expectancy 26 years, 4 months; date, October 10, 1896.

60

9259.

Insured John W. Hurley: Form #1; Simonidies Court #1; aged 35; beneficiary, Ida M. Hurley; Amount $2,100.00; life expectancy 32 years, 2 months; date of policy, July 25, 1896.

4950.

Insured Horace G. Brown: Form #1; Simonidies Court #1; age 35; beneficiary Anna Brown; amount $2,100.00; life expectancy 32 years, 2 months; date of policy, December 20 1895.

11445.

Insured Thomas J. Houlehan: Form #1; Simonidies Court #1; age 41; beneficiary, Fanny E. Houlehan; amount $1,800.00; life expectancy 27 years, 10 months; date December 16, 1896.

Insured Frank S. Van Dyke: Form #1; Lafayette Court #38; age 37; beneficiary Catherine Van Dyke; amount $2,100.00; life expectancy, 31 years, 10 months; date, July 29, 1895.

13293.

Insured, Edwin A. Brown; Form #1; Simonidies Court #1; age 45 years; beneficiary Mary L. Brower; amount of insurance $1,500.00; life expectancy 24 years, 6 months; date January 30, 1897.

7570.

Insured, James Walter Grimes, Wayeland Court #80; Form #1; age 27 years; beneficiary Nora F. Grimes; amount, $2,400.00; life expectancy, 38 years, 4 months; date April 18, 1896.

11798.

Insured, Vona Dickerson, Form #1; Balthasar Court #9; age 35 years; beneficiary James W. Dickerson; amount $2,100.00; life expectancy 32 years, 2 months; date December 22, 1896.

61 11207.

Insured, John S. James Dickerson: Form #1; Balthasar Court, #9; age 43 years; beneficiary Vona Dickerson; amount $1,700.00; life expectancy 26 years, 4 months; Date, December 7, 1896;

11251.

Insured, John C. Wingate, Form #1; Simonidies Court #1; age 45 years; beneficiary Lydia Wingate; 750 amount $1,750. Life expectancy 24 years, 6 months; date, December 8, 1896.

8157.

Insured Anna N. Young; Form #1; Ruth Court #8; Age 40; beneficiary Wesley W. Young; amount $500.00; expectancy 27 years 10 months; date May 19, 1896.

344.

Insured Eliza H. Watson: Form #2; Simonidies Court #1; aged 44 years; beneficiary, O'Neal Watson; amount of insurance $1,000.00; life expectancy 25 years, 4 months; date June 25, 1894. 1,500.

343.

Insured O'Neal Watson: Form #2; Simonidies Court #1; aged 44 years; beneficiary Mrs. Eliza H. Watson; amount $2,000.00; life expectancy 25 years, 4 months; date, April 5, 1894.

330.

Insured Harry M. Vance: Form #2; Simonidies Court #1; aged 31 years; beneficiary, Mrs. Nora Vance; amount $3,500.00; life expectancy, 34 years, 7 months; date April 5, 1894. $2,300.00.

197.

Insured, Robert McMains: Form #2; Simonidies Court #1; age 42 years; beneficiary, Mrs. Catherine McMains; amount of insurance $2,000.00; life expectancy, 26 years, 9 months; date, April 5, 1894.

62 378.

Insured John C. Wingate: Form #2; Simonidies Court #1; aged 42 years; name of beneficiary, Lida & Nancy Wingate; amount of insurance $2,000.00; life expectancy 26 years, 9 months; date, April 26, 1894.

6537.

Insured Anna E. Young: Form #2; Ruth Court #8; aged 39 years; name of beneficiary Wesley W. Young; amount of insurance $1,000.00; life expectancy 28 years, 11 months; date May 5, 1894.

5603.

Insured Wesley W. Young: Form #2; Ruth Court #8; aged 39 years; name of beneficiary, Anna E. Young; amount $2,000.00; life expectancy 28 years, 11 months; date April 16, 1894.

84748.

Insured, Mary E. Osburn: Form #3; Simonidies Court #1; aged 38 years; beneficiary Garnet D. Osburn; amount $1,100.00; date, May 14th, 1902.

76534.

Insured Margaret Speed: Form #3; Simonidies Court #1; age 48 years; beneficiary, Sidney Speed; amount $1,000.00; date September 25, 1900.

63 Your plaintiffs further allege that the other defendants than the defendant corporation were and are duly qualified, appointed and acting officers, directors, trustees and Supreme Officers of said defendant Company, and that said other defendants were such qualified and acting officers of said company during the periods of time herein complained of and referred to in this complaint.

Your plaintiffs further allege that, pursuant to the issuance of the said policies herein complained of and referred to that each of said plaintiffs has performed all of the conditions and requirements of said policies required to be performed on the part of each of said insured and also have performed all the conditions required of them to be performed by each and all of the by-laws of said defendant Company.

Your plaintiffs further allege that it is informed and believes and alleges it to be the truth that there is only one copy of the by-laws of the defendant company, which were the by-laws of said company at the time of the issuance of said policies in existence and that the same is in the possession and control of the defendant company and that these plaintiffs have not access there to and cannot, at this time, file a copy of the same with this complaint, but allege that upon securing permission in this case from the defendants, they will make a copy thereof, as part of this complaint and that they will ask permission to do same in this cause and that said will be filed, made a part of this complaint, and marked "Exhibit A".

Plaintiffs allege that the by-laws of said defendant company among other things, required that each person taking out a policy shall pay

a stipulated amount as an expense for the actual securing of
61 the policy and the issuance of the same and a medical examination, as would entitle them to membership to the various courts and entitles them to the right of a policy, all of which expense in addition to other payments herein to be made, each of these plaintiffs have duly paid to the proper parties. That in addition to the foregoing expenses, the by-laws provide that each policy holder on his policy shall pay into the treasury of the defendant company a sum of 75c each six months, or $1.50 per annum, which said sum is to go into the expense fund of said defendant company, to be used by the said defendant company for the purpose of procuring additional policy holders and further the interest of said insurance department of said defendant company.

That in addition to said amount, the by-laws further provide that the insured shall pay a sum of $1.00 a month, or, to-wit, the sum of $12.00 per annum into the treasury of said defendant company, which said sum so paid in shall be paid into a fund known as the beneficiary fund, and from which said fund, all his liabilities on the policies in the case of benefits on death loss or maturity of the policy, the policy holder should be paid same out of said fund and which said fund should be known as the beneficiary fund.

Your plaintiffs each allege that they have made all of said payments so required to be made at the time required to be made and in the manner required by the by-laws of the defendant company and the terms of their policies up to such time as will hereinafter be referred to, when the said defendant company refused to accept any of such payments, and your plaintiffs each for themselves complains that

at all times since said defendant company refused to accept
65 said payments, the said plaintiffs have offered to pay in lawful money of the United States, all payments required to be paid by the by-laws and in the terms of the policy, at the time and places in which the same are required to be paid, but that said defendant company has refused to take same and has notified each of said policy holders that they have refused to take any more payments on the same and that the said defendant company did refuse to take any further payments at the times hereinafter referred to.

Your plaintiffs further allege that among other things, the by-laws provide that, if necessary, the officers of the defendant should have the right to double the amount of assessments which are made for the benefit of the beneficiary fund.

Your plaintiffs further allege that in the month of October, 1916, and for some time prior thereto, the beginning of which, these plaintiffs are now advised, all of the defendants conspired and planned to defeat each and all of these contracts of policy and to render them worthless and in order to do so, they unlawfully, wrongfully, negligently, carelessly, willfully and purposely did and refrained from doing the things which would ultimately bring about said conditions and the things so done and the things so refrained from doing by the said defendants, these plaintiffs charge to be as follows:

Your plaintiffs allege that there was a great amount of moneys in the expense fund and a great amount was coming in each year,

to-wit: several $100,000.00, which was to be used for the purpose of getting new members in said company. That all of defendants, unlawfully, negligently and unlawfully set about to cause said fund
66 to diminish and to squander and spend the same. That they wrongfully employed useless and worthless employees and paid them extravagant salaries, for the purpose of depleting said fund. That they wrongfully and unlawfully paid themselves out of said funds enormous salaries and performed no services whatever to said company, which inured to the benefit of the policy holders in said company at said time who had a right to have the same spent for their benefit. That the defendants, all of them, wrongfully and unlawfully conspired to start another class of insurance in said company at said time and procure all future policies to be taken in the other class and of which classes, the then present policy holders should not participate in any of its proceedings or doings. That they wrongfully and unlawfully solicited and procured the policy holders in the class in which these plaintiffs were listed to withdraw from said class and to stop the payment of any moneys into the beneficiary fund and into the expense fund out of which these plaintiffs were participating and caused them to take policies in the new class and stop their policies in this class and wrongfully took such pro rata amounts of moneys as were in the beneficiary fund and transferred same over to the account of said transferred members into the other class, out of which these policy holders could not participate under any circumstances.

Your plaintiffs allege that it costs a great amount of money to advertise, solicit and start an insurance company and that it costs a great amount of money to start a new class. That the defendants wrongfully and unlawfully and fraudulently used the monies paid in by these plaintiffs and other plaintiffs belonging to the same class with these plaintiffs, which was paid in for expense money, to
67 employ employment, and to pay for the solicitation of other persons to join and enter the new class and employed certain persons for the purpose of keeping any new persons from joining the class in which these plaintiffs were interested.

That these defendants and all of them, conspired and wrongfully, unlawfully and fraudulently caused moneys to be taken out of the beneficiary fund and expense fund to which these plaintiffs had paid in moneys for the purpose of compromising and settling and contention of other policy holders of said company to prevent law suits from being filed against them and that the defendants did all of them unlawfully, wrongfully, and fraudulently do all the things herein charged for the express purpose and intent of causing each of these plaintiffs loss in the value of their said policies and a loss and damage to them in their insurance and their contracts as shown by their said policies. And that the said defendants conspired and unlawfully, fraudulently and wrongfully refrained from increasing the rate of premium to be paid by policy holders into the class in which these plaintiffs were participants, knowing that by so doing, it would be the easier to destroy the contracts of these plaintiffs and prevent others from entering said class.

Your plaintiffs allege that by reason of said fraudulent, wrongful and unlawful acts committed by these defendants, and by reason of their unlawful, fraudulent and wrongful acts in refraining from doing those things herein which they should have done, the funds so created by these plaintiffs in class in which they participated, became wasted and destroyed and said class became totally and wholly insolvent and said beneficiary fund became wholly and entirely depleted.

68 That these plaintiffs did not know that said class was becoming depleted and that said defendants were aiming to deplete the same but kept on paying their moneys according to contract into said company during all the period of time in which the defendants conspired to destroy the same. That these defendants wess knew at said time, that these plaintiffs were ignorant of what defendants were attempting to do and knew they were attempting to deplete said funds and knew that in a very short time, the policies of these plaintiffs would be worthless and for the purpose of causing the same to become worthless and as a trick and devise for deceiving these plaintiffs and keeping them ignorant of the fact that their policies would become worthless by the methods employed, the defendants caused in each issue of a paper which the defendants were at said times editing and causing to be sent out to its various members, known as "The Chariot," certain advertisements in substance as follows: Notice of the following nature: "The Ben Hur has never gone back on a contract and never will" and they continued these advertisements in said paper during the period of time in which they are charged of attempting to wreck the class in which these plaintiffs were placed and to render the funds therein insolvent, all of which acts herein charged as having been done by the defendant, were unlawful, fraudulent and wrongful, and the refraining from doing of such acts as herein charged was wrongful and fraudulent.

Your plaintiffs further allege that had they used their efforts for which they were paid, in increasing the membership in this class and increasing the membership fee, which they had a right to

69 do, they could have kept alive the policies of these plaintiffs and the same would have been of full value at this time.

Your plaintiffs charge and allege that they took their policies herein set forth in said company that the defendants, all of them, informed the plaintiffs that they were giving these plaintiffs special inducements in policies for the purpose of the advertisement and help it would give to the defendant company in procuring other *paoicies*, which would not be as favorable to the policy holders later on and that it was worth a considerable amount in value to have these policy holders, being a representative class in taking their said policies and assisting said defendant company to thrive and build up a large insurance business, and your plaintiffs allege and charge that said facts are true.

Your plaintiffs allege that each of the plaintiffs on or about the month of October, 1916, tender- their respective payments to defendant company required to be paid by the by-laws and the terms

of the policies. That the defendants wrongfully, fraudulently and unlawfully, refused to take said payments and notified said plaintiffs that their policies were of no value whatever; that they had no interest in said company and that they would no longer accept any premium or expense money.

Your plaintiffs allege that by virtue of said fraudulent, wrongful and unlawful acts and demeanor of the defendants, each of these plaintiffs have been damaged in the following amounts, to-wit:

Sidney Speed	$900.00
Margaret Speed	1,000.00
Eliza H. Watson	1,000.00
William C. White	1,100.00
70 Lavander C. White	1,200.00
Ida M. Williams	1,050.00
William H. Williams	1,600.00
John H. Rice	1,500.00
Theodore M. Sharp	1,000.00
George Weilest	900.00
Robert T. Davis	1,800.00
Mary E. Osburn	1,100.00
Robert McMains	2,000.00
Margaret C. McMains	1,800.00
John W. Hurley	2,100.00
Henry T. Schenck	1,700.00
Forest C. Brown	2,100.00
Thomas J. Houlehn	1,800.00
Harry V. Vance	2,000.00
George C. Fox	2,500.00
Armina J. Cox	1,150.00
Elizabeth Clemson	1,800.00
O'Neal Watson	200.00
Thomas J. Sharp	1,700.00
Edwin A. Brower	1,500.00
James Walter Grimes	2,400.00
Vona Dickerson	2,100.00
James W. Dickerson	1,700.00
John C. Wingate	2,750.00
Anna E. Young	1,950.00
Wesley W. Young	2,000.00

Your plaintiffs further allege that the moneys so spent by all the defendants belonging to the various funds, which was to inure — the benefit of these plaintiffs and which would have inured to their benefit had it not been so spent and which money so spent in the manner as alleged in this complaint, was spent for purposes of profit and gain to the said defendant corporation and to all others insured in all of the other classes, excepting the clas-es to which these plaintiffs belonged and that said defendant company and all others insured therein provided and gained exceedingly in the use of the money so spent.

71 Wherefore, plaintiffs pray the court for a judgment to each of the plaintiffs in the following sum, to-wit:

Sidney Speed	$900.00
Margaret Speed	1,000.00
Eliza H. Watson	1,000.00
Lavander C. White	1,200.00
Ida M. Williams	1,050.00
John C. Williams	1,800.00
William H. Williams	1,600.00
John H. Rice	1,500.00
Theodore M. Sharp	1,000.00
George Weilest	900.00
Robert T. Davis	1,800.00
Mary E. Osburn	1,100.00
Robert McMains	2,000.00
Margaret C. McMains	1,800.00
John W. Hurley	2,100.00
Henry T. Schenck	1,700.00
Forest C. Brown	2,100.00
Thomas J. Houlehan	1,800.00
Frank S. Van Dyke	2,000.00
Harry V. Vance	2,500.00
George C. Fox	1,150.00
Armina J. Fox	800.00
Elizabeth Clemson	1,800.00
O'Neal Watson	300.00—2,000.00
Thomas J. Sharp	1,700.00
Edwin A. Brower	1,500.00
James Walter Grimes	2,400.00
Vona Dickerson	2,100.00
James W. Dickerson	1,700.00
John C. Wingate	2,750.00
Anna E. Young	1,950.00
Wesley W. Young	2,000.00

and for costs and all other relief in the premises.

BACHELDER & BACHELDER.

72 And thereupon on the 26th day of September, 1919, issued out of the office of the clerk of said court, a summons, in the words and figures following, to-wit.

73 UNITED STATES OF AMERICA,
District of Indiana:

The President of the United States of America to the Marshal of the District of Indiana, Greeting:

You are hereby commanded to summon

Aurelia J. Cauble, Indianapolis,
Edwin A. Broker, "
Anna E. Young, Huntington,
Wesley W. Young, "
Martha M. Brown, Crawfordsville,
Helen B. Burroughs, "
O'Neal Watson, "
Harry M. Vance, "
Robert McMains, Crawfordsville,
Eliza H. Watson, "
Sidney Speed, "
William C. White, "
Lavander C. White, "
Ida M. Williams, "
John O. Williams, "
William H. Williams, "
John H. Rice, "
Theodore M. Sharp, "
Robert T. Davis, "
George Neilist "
Margaret C. McMains, "
John W. Hurley, "
Henry T. Schenck, "
Thomas J. Houlehan, "
Frank S. Van Dyke, "
George C. Fox, "
Armina J. Cox, "
Elizabeth Clemson, "
Margaret Speed, "
Thomas J. Hart, "
James Walter Grimes, "
Vona Dickerson, "
John C. Wingate, "
James W. Dickerson, "

if they be found in your district, to be and appear in the District Court of the United States, for the District of Indiana, aforesaid, at Indianapolis, on the — day of —— next, to answer a certain Ancillary Bill in Equity filed and exhibited in said Court against them by The Supreme Tribe of Ben-Hur.

Hereof they are not to fail under the penalty of the Law thence ensuing.

And have you then and there this writ.

Witness, the Honorable Albert B. Anderson., Judge of said Court, and the seal thereof, this 26th day of September, A. D. 1919.

(Signed) NOBLE C. BUTLER,
[SEAL.] *Clerk.*

Memorandum.

The said defendants are required to file their answer or other defense in this suit in the Clerk's Office of said Court on or before the twentieth day after service, excluding the day thereof; otherwise the said Bill may be taken pro confesso.

(Signed) NOBLE C. BUTLER,
Clerk.

[Endorsed:] U. S. District Court. District of Indiana. No. 7. George Balme et al., vs. The Supreme Tribe of Ben-Hur et al. The Supreme Tribe of Ben-Hur vs. Aurelia J. Cauble et al. Returnable 16th day of October, 1919. Miller, Dailey & Thompson, City, Complainant's Solicitor.

DISTRICT OF INDIANA:

I received this writ at Indianapolis, in said District, at — o'clock — M., on the 8th day of October, A. D. 1919, and served the same in Montgomery County, as follows: 8th day of October, 1919, by copy: By reading the same to and within the hearing of, and by delivering a true copy of this writ to the within named O'Neal Watson, Harry M. Vance, Robert McMains, Eliza Watson, Sidney Speed, William C. White, Lavander C. White, Robert T. Davis, Margaret McMains, Thomas I. Houlehan, Armina C. Cox, Elizabeth Clemson and Margaret Speed, at Crawfordsville, and George C. Fox, at Linden, and John C. Wingate, at Wingate; and by leaving a true copy of this writ at the last and usual place of residence of Martha M. Brown, Helen B. Burroughs, Ida M. Williams, John O. Williams, William H. Williams, George Neilist, John W. Hurley, Henry T. Schneck and Frank S. Van Dyke, at Crawfordsville; Montgomery County, Indiana, October 8, 1919. The within named Vona Dickerson, John Walter Grimes, Thomas I. Hart, John H. Rice and Theodore M. Sharp, not found in my district.

MARK STOREN,
U. S. Marshal.
By C. E. WHICKER,
Deputy.

Received this writ at Indianapolis, Ind., Oct. 9, 1919, and served the same upon the within named Wesley W. Young, by reading the same to and within his hearing, and by delivering a true copy of this writ to him; and upon Anna E. Young, by leaving a true copy of this writ at her last and usual place of residence, in the

hands of her husband; both at Huntington, Huntington Co., Indiana, October 10, 1919.

MARK STOREN,
U. S. Marshal.
By C. E. WHICKER,
Deputy.

Received this writ at Indianapolis, Ind., Oct. 15, 1919, and served the same upon the within named Aurelia J. Cauble, by leaving a true copy of this writ in the hands of her attorney Frank West, at Indianapolis, Marion Co., Indiana, October 15, 1919.

MARK STOREN,
U. S. Marshal,
By C. E. WHICKER,
Deputy.

74 And afterwards, to wit: at the May Term of said Court, on the 27th day of October, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following proceedings in the above entitled cause were had, to wit:

Come now the defendants by Bachelder and Bachelder, their solicitors, and file their motion to dismiss the bill of complaint herein, which motion is in the words and figures following, to wit:

Now comes the defendants in the above entitled cause and each of them separately and severally moves the court to dismiss this action, and that they take their costs in this suit incurred, for the following reasons:

I.

Because it appears in the ancillary bill filed in this cause that no diversity of citizenship exists as alleged and upon which basis the court is alleged to have jurisdiction, which lack of diversity is shown by the following facts, all of which appears in said ancillary bill:

1. None of the defendants to the ancillary bill were parties to the original bill and the ancillary bill alleges that all of the defendants thereto are citizens of the same state as the complainant, Supreme Tribe of Ben Hur, all of which is in direct violation of Para. 1019, P. 1033, 1 U. S. Com. St. 1916.

2. If these defendants were parties complainant to the original bill, the court did not have jurisdiction of the original bill in this case, because said bill alleges that it was brough- "on behalf of these complainants and all other members of Class A" and did not allege that "All other Members of Class A" were not citizens of the State of

75 Indiana, when in fact, it is shown by the ancillary bill that all of the defendants thereto are citizens of the State of Indiana, and of the same state as the complainant, the Supreme Tribe of Ben Hur.

3. The defendants, Aurelia J. Cauble, Martha M. Brown and Helen B. Burroughs, are citizens of the same state as the complainant,

and these defendants are not and never have been members of Class A in said Society of Ben Hur and were not parties to the original bill and, therefore, are new parties to this action.

4. This ancillary bill alleges that defendant, Mary E. Osborn, was at the time of the original bill a citizen of the State of Indiana, and therefore, of the same state as the complainant.

II.

That the Federal Court has no jurisdiction of this ancillary bill for the reason that said bill asks the Court to enjoin proceedings in the State Court, in cases which the Federal Court is not authorized to enjoin by any law relating to proceedings in bankruptcy. All of which is in direct violation of the laws of the United States, as shown in #1 U. S. Com. St. of 1901, Para. 720.

III.

That the Federal Court does not have jurisdiction to enjoin proceedings in the State courts, as requested by this bill, for the reason that said proceedings are not attempting to deny the decree and judgment of the Federal Court on the original bill, the full faith and credit to which it is entitled.

IV.

That there is an insufficiency of fact to constitute a valid cause of action in equity against these defendants for the following reasons, to wit:

76 1. Complainant has an adequate remedy at law in said proceedings in the courts of the State of Indiana, as provided in 1914 Burns R. S. of Indiana, Para. 352:

"Defendant may set forth in his answer as many grounds of defence, counter claim and set off, either legal or equitable, as he shall have."

2. This ancillary bill cannot be heard to avoid a multiplicity of actions because it appears in said bill that the actions in the State Courts are of such a nature that they cannot be joined either in a state or Federal Court in an action at law or in equity for the reason that one of the actions is a suit brought by all of the defendants to this bill who are members of Class A in the Ben Hur Society, while the other two suits are by beneficiaries of policies, who are suing to recover their loss on said policies, due to the death of the parties insured therein. Each action is a distinct and separate cause, founded upon a totally different set of facts, requiring totally different kinds of proof, composed of different parties plaintiff, none of whom have any interest whatever in any other action but their own and each case seeks a different form of relief. There is no similarity, either of

parties, issues, proof required, or relief obtainable. Therefore, these actions cannot be joined in one action, even in a court of equity.

3. The decree and judgment of the Federal Court in this case is not a bar as to these defendants, for the reason that the ancillary bill alleges that these defendants were none of them parties to the original bill and that none of them were notified of said proceedings and were not present, either in person or by attorney, in the trial of said cause, nor did they have any opportunity whatever to be heard in court in said cause.

4. The decree and judgment of the Federal Court in this cause is not a bar to these defendants, for the reason that said judg-
77 ment was in effect that the complainants in the original bill had an adequate remedy at law and, therefore, it could not bar any parties from pursuing the prosecution of their cause in a court at law.

5. The decree and judgment of the Federal Court in this cause is not a bar to these defendants for the reason that a judgment in Federal Court is not and cannot be an absolute bar to proceedings in a state court.

6. The decree and judgment of the Federal Court in this cause is not a bar to the defendant Aurelia J. Cauble, for the reason that it appears in the ancillary bill that her action did not accrue until after the decision of the court, on July 1st, 1915, for the reason that her action grows out of the fact of the death of Peter C. Cauble, on the 19th day of February, 1918, and the subsequent refusal of the complainants to pay the amounts of the policy held by the deceased.

7. The decree and judgment of the Federal Court in this cause is not a bar to the defendants, Martha M. Brown and Helen B. Burrought, for the reason that it appears in the ancillary bill that their action did not accrue until after the decision of the court on July 1st, 1915, for the reason that their action grows out of the fact of the death of Horace G. Brown on the 30th day of December, 1918, and the subsequent refusal of the complainant to pay the amount of the policy held by the deceased.

8. The decree and judgment of the Federal Court in this cause is not a bar to all the defendants, except Aurelia J. Cauble, Helen B. Burroughs, and Martha M. Brown, for the reason that it appears in the ancillary bill that the cause of action of these defendants did not accrue until after the decree of the Federal Court, on July 1st, 1915, in that their cause of action grew out of the alleged acts of the complainant herein in the month of October, 1916, in refusing, and notifying these defendants of their refusal, to accept any more pay-
78 ments on their policy on and after the month of October, 1916.

9. The decree and judgment of the Federal Court in this cause is not a bar to these defendants for the reason that a decree dismissing for want of equity, a bill filed by several parties of a

claim "on their own behalf and on behalf of all others or like interest" is not a bar to "others of like interest" who were not active parties to that suit and the ancillary bill alleges that none of these defendants were active parties to this original bill.

10. The decree and judgment of the Federal Court in this cause is not a bar to these defendants, for the reason that it appears in the ancillary bill that the finding of facts by the Master in Chancery in the original cause upon which facts the court gave his decree and judgment, contained in fact #21, the following statement:

"That all work done by the officers or agents of the corporate defendant in advancing the enjoyment, enthusiasm and spirit of the local courts and the members thereof, has been and is incidental of new Class B business and has been and is done for the purpose of securing such business and continuing the business of class A."

And the ancillary bill further shows that afterwards and after the decree and judgment of the court on July 1st, 1915, said corporate defendant did discontinue the business of Class A and said bill further shows that the cause of action of these defendants actually grew out of and accrued from the acts of said corporation in discontinuing said Class A.

11. The decree rendered cannot by an ancillary proceedings be extended to these defendants, for the reason that they were not parties or privies to the original cause and for the further reason that if they had been parties to the original cause, the Federal Court would not have jurisdiction of said action on the grounds of diversity of citizenship.

12. The decree and judgment of the Federal Court in this cause is not a bar to these defendants for the reason that the Federal
79 Court had no jurisdiction in said action to determine the equities of any parties complainant who were citizens of the State of Indiana, because in that case there would have been no diversity of citizenship as alleged in the original bill for all of these defendants are citizens of the State of Indiana.

It appears from the ancillary bill of complaint that the defendants therein named are, and were at the time of the filing of the original bill in the case of Bahn et al., citizens of the State of Indiana, and that the complainants in such original bill were none of them citizens of the State of Indiana, therefore,

1. The Federal Court had no jurisdiction to determine the equities of citizens of the State of Indiana in the original proceedings herein.

2. Under Equity Rule 38, the decree of the Federal Court in the original proceedings herein was without prejudice to the defendants named in the ancillary bill of complaint.

3. The decree rendered in the original proceedings herein cannot by ancillary proceedings be extended so as to operate in bar against

citizens of Indiana, who were not and could not have been complainants in the original bill in the case of Balme et al.

BACHELDER & BACHELDER,
Attorneys for Defendant.

And afterwards, to wit: at the May Term of said Court, on the 29th day of October, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to wit:

80 Comes now the defendant, Aurelia J. Caulde, by her solicitors, Guilford A. Deitch and Frank G. West, and files her motion to dismiss the ancillary bill of complaint, in the words and figures following, to-wit:

Comes now Aurelia J. Caulde, one of the defendants in the above entitled cause, and moves the court to dismiss the Ancillary Bill of Complaint herein filed at the costs of the defendant society, for the following reasons, to-wit:

1. It appearing from the Ancillary Bill of Complaint that Aurelia J. Caulde was a citizen of the State of Indiana at the time of the filing of the original bill in the case of Balme et al., U. S. District Court for the District of Indiana had no jurisdiction to determine her equities in the original proceedings herein.

2. Under Equity Rule 39 the decree of the U. S. District Court, for the District of Indiana in the original proceedings herein was without prejudice to Aurelia J. Caulde and the other defendants named in the Ancillary Bill of Complaint.

3. The decree rendered in the original proceedings herein cannot by Ancillary proceedings be extended so as to operate in bar against citizens of Indiana who were not and could not have been complainants in the original bill in the case of Balme et al.

4. The decree rendered in the original proceedings cannot operate as a bar against the defendant, Aurelia J. Caulde, for the reason that there are different issues presented in the proceedings in the Marion Circuit Court which are not litigated in the suit by Balme et al., to-wit, the right of a beneficiary of a member of Class "A" of said society to insist that the insurance contract be performed as made and without regard to the attempted changes.

81 Wherefore, the defendant, Aurelia J. Caulde, respectfully prays that the Ancillary Bill herein filed be dismissed as to her and that she have judgment as against the defendant for her costs.

GUILFORD A. DEITCH,
FRANK G. WEST,
Attorneys for Aurelia J. Caulde.

82 And thereupon on the 4th day of November, 1919, issued out of the office of the clerk of said court, a summons, in the words and figures following, to-wit:

63 UNITED STATES OF AMERICA,
District of Indiana:

The President of the United States of America to the Marshal of the District of Indiana, Greeting:

You are hereby commanded to summon Edwin A. Brower, 1942 Ashland Ave., Indianapolis; John H. Rice, Waveland; Theodore M. Sharp, Waveland; James W. Dickerson, Wingate; Vona Dickerson, Wingate; Thomas J. Harp, Darlington Road, East of Crawfordsville, J. Walter Grimes, Crawfordsville. Impleaded with others, if they be found in your district, to be and appear in the District Court of the United States, for the District of Indiana, aforesaid, at Indianapolis, on the — day of — next, to answer a certain Bill in Equity filed and exhibited in said Court against them by Supreme Tribe of Ben-Hur. Hereof they are not to fail under the penalty of the law thence ensuing.

And have you then and there this writ.

Witness, the Honorable Albert B. Anderson, Judge of said Court, and the seal thereof, this 4th day of November, A. D. 1919.

(Signed) NOBLE C. BUTLER,
Clerk.

[SEAL.]

Memorandum.

The said defendants are required to file their answer or other defense in this suit in the Clerk's Office of said Court on or before the twentieth day after service, excluding the day thereof; otherwise the said Bill may be taken pro confesso.

(Signed) NOBLE C. BUTLER,
Clerk.

DISTRICT OF INDIANA:

I received this writ at Indianapolis, in said District, at — o'clock —. M., on the 4th day of November, A. D. 1919, and served the same in Montgomery & Marion County, as follows: 5th & 7th days of Nov., 1919, by copy upon within named Theodore M. Sharp, by reading the same to and within the hearing of, and by delivering a true copy of this writ to him, at Waveland, Montgomery Co.; and by leaving a true copy of this writ at the last and usual place of residence of John H. Rice, at Waveland, Montgomery Co., James W. Dickerson and Vona Dickerson, at Wingate, Montgomery Co., Indiana, Nov. 5, 1919, and Edwin A. Brower, at Indianapolis, Marion Co., Indiana, Nov. 7, 1919. The within named J. Walter Grimes not found in my district, at Crawfordsville, Fayette Co., Indiana, also Thomas J. Harp by copy at Crawfordsville, Montgomery Co., Ind., Nov. 5, 1919.

MARK STOREN,
U. S. Marshal,
By C. E. WHICKER,
Deputy.

[Endorsed:] Alias. U. S. District Court, District of Indiana. No. 7. Supreme Tribe of Ben-Hur vs. Aurelia J. Cauble et al. Subpœna in Chancery returnable 24th day of November, 1919. Crane & McCabe, Miller, Bailey & Thompson, Complainant's Solicitor.

84 And afterwards, to-wit: at the November Term, 1919, on the 4th day of February, 1920, before the Honorable Francis E. Baker, Circuit Judge, the following further proceedings in the above entitled cause were had, to-wit:

Public interest so requiring I designate and assign Francis E. Baker, Circuit Judge, to hear and determine the above entitled cause.

FRANCIS E. BAKER,
Senior Circuit Judge.

Feb. 2, 1920.

BAKER, *Circuit Judge:*

The original bill in this case was brought against the Supreme Tribe of Ben Hur by George Bahne et al. in their own right and on behalf of other holders of Class A certificates. The court took jurisdiction on the ground of diversity of citizen-ship, as the defendant was an Indiana corporation and none of the names complainants was a citizen of that state. A decree in favor of the defendant resulted. Actions against the Supreme Tribe of Ben Hur raising the same questions were then started in the state courts of Indiana by Indiana holders of Class A certificates. The Supreme Tribe of Ben-Hur thereupon presented this as an ancillary bill to restrain those Indiana citizens from prosecuting their actions in the state courts, claiming that the original bill was a class suit and the rights of all holders of Class A certificates were fully adjudicated, as in Royal Arcanum v. Green, 237 U. S. 531.

It is a fundamental principle of our system of jurisprudence that no court may adjudicate the rights of parties who are not subject to its jurisdiction. Had the Indiana holders of Class A certificates been named in the original bill, the court could not have taken jurisdiction on the grounds then relied on, i. e., diversity of citizenship. Was there anything about the subject matter of this as a class suit which would give the court jurisdiction over the rights of those who could not be named parties to the bill without ousting the jurisdiction?

85 Before the Judiciary Act of 1789 created the Federal courts, the doctrine of class suits (though not called by that name) was a well established exception to the general rule that only rights of actual parties to the bill may be affected by the decree. Story's Eq. Pl. 10th Ed., 94-116; West v. Randall, 2 Mason 192; Adair v. New River Co., 11 Ves. 429; Wendell v. Van Rensselaer, 1 Johns. Ch. 349; Mare v. Malachy, 1 Myl. & Cr. 559; Penn v. Craig, 3 Y. & Coll. 216; and Barker v. Walters, 8 Beav. 92. At that time the courts of a state in which a particular corporation was

domiciled were the necessary forums of all grievances concerning the rights of any of its citizens against that corporation. To state the same thing from a different viewpoint, the rights of a citizen against a corporation of his own state could have been adjudicated in the courts of that state only. To be sure, a citizen of a different state might have brought an action against the corporation—he might even have brought a class suit against it—but he must have brought it in the courts of the home state of the corporation.

The Constitution gave to the Federal courts jurisdiction over cases of law and equity involving non-federal questions only when the parties were of diverse citizenship. Their jurisdiction over the subject matter of class suits, then a well established doctrine, was thereby limited to cases wherein the parties were purely interstate. Therefore, adjudication of the rights of a citizen against a corporation of his own state, being only intrastate litigation, could not be had in the Federal courts.

Equity Rule 28 is as follows:

"When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole."

86 This rule formerly was qualified by the following clause:

"but in such cases the decree shall be without prejudice to the rights and claims of the absent parties." It is urged by complainant that this omission was intended to remove the interstate limitation of the jurisdiction of the Federal courts when a class suit was the subject matter. If it was intended to extend jurisdiction in such a naive fashion, such intention could not have been thus accomplished, for the limitation of the jurisdiction of the Federal courts with respect to subject matter being constitutional, it could not be affected by rules, either affirmatively or negatively expressed.

A rule more applicable to the present case is Rule 39. This rule and the Act of February 27, 1839, on which it is based, merely formulate a long established practice. Commercial Bank v. Slocomb, 14 Pet. 60; Shields v. Barrow, 17 How. 129; and Thomas v. Anderson, 223 Fed. 41, (C. C. A. 8th Cir.). The rule is as follows:

"In all cases where it shall appear to the court that persons, who might otherwise be deemed proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may, in its discretion, proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties."

It cannot be doubted that Indiana citizens were "out of the jurisdiction" of the Federal court in the suit against an Indiana corporation. Nor can it be doubted that "their joinder would oust the jurisdiction of the court." Although that did not prevent the court from

proceeding with the cause, the rights of Indiana citizens were not affected because "in such cases the decree shall be without prejudice to the rights of the absent parties." In other words, although the original bill was a class suit, the class did not include Indiana citizens.

87 Sometimes by means of an ancillary bill or an intervening petition a Federal court hears and determines a non-federal controversy between citizens of the same state; but that occurs only in those cases in which the Federal court is already properly in possession of a res and the determination of the intrastate non-federal controversy is necessary to a just administration of the res. Manifestly this bill is not of that character, for the original bill involved only the character rights of the Ben Hur Society under the Indiana statutes.

The present defendants not being parties to the original bill, this proceeding is not an ancillary bill, but is an orignal blll of an Indiana corporation against Indiana citizens and this court is without jurisdiction.

The bill is therefore dismissed on the sole ground that the court is without jurisdiction to entertain it.

FRANCIS E. BAKER.
C. J.

Feb. 4, 1920.

And at the same time, to wit: on the 4th day of February, 1919, before the Honorable Francis E. Baker, Circuit Judge, the following proceedings were further had in the above entitled cause, to wit:

88 In the District Court of the United States for the District of Indiana.

In Equity.

No. 7.

GEORGE BALME et al., Complainant-,

vs.

THE SUPREME TRIBE OF BEN-HUR, ROYAL H. GERARD, JOHN C. Snyder, Samuel E. Voris, Jesse F. Davidson, John R. Bonnell, George Hazen, Defendants.

THE SUPREME TRIBE OF BEN-HUR, Complainant,

vs.

AURELIA J. CAUBLE, MARTHA M. BROWN, HELEN B. BURROUGHS, O'Neal Watson, Harry M. Vance, Robert McMains, Eliza H. Watson, Sidney Speed, William C. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams, John H. Rice, Theodore M. Sharp, Robert T. Davis, George Neilist, Margaret C. McMains, John W. Hurley, Henry T. Schenck,

Thomas J. Houlehan, Frank S. Van Dyke, George C. Fox, Armina J. Cox, Elizabeth Clemson, Margaret Speed, Thomas J. Harp,
89 Mary E. Osburn, Edwin A. Brower, James Walter Grimes, Vona Dickerson, John C. Wingate, Anna E. Young, Wesley W. Young, James W. Dickerson, Defendants.

This cause came on to be heard this 4th day of February, 1920, before the Honorable Francis E. Baker, Judge, upon the motion of the defendants to the ancillary bill of complaint to dismiss the same, the complainant to the ancillary bill of complaint being represented by its solicitors, Crane & McCabe, and Miller, Dailey & Thompson, and the defendants being represented by their solicitors, Bachelder & Bachelder, Guilford A. Deitch and Frank G. West.

And the court having heard the arguments of counsel and being sufficiently advised in the premises, now sustains the motion of the defendants to dismiss said ancillary bill of complaint, and dismisses the same also on his own motion, said dismissal being made solely on the ground of want of jurisdiction of the court to entertain said ancillary bill of complaint.

90 And at the same time, to wit: on the 4th day of February, 1919, a certificate of dismissal was filed in the above entitled cause, as follows:

91 In the District Court of the United States for the District of Indiana.

In Equity.

No. 7.

GEORGE BALME et al., Complainant.

vs.

THE SUPREME TTIBE OF BEN-HUR, ROYAL H. GERARD, JOHN C. Snyder, Samuel E. Voris, Jesse F. Davidson, John R. Bonnell, George Hazen, Defendants.

THE SUPREME TRIBE OF BEN-HUR, Complainant,

vs.

AURELIA J. CAUBLE, MARTHA M. BROWN, HELEN B. BURROUGHS, O'Neal Watson, Harry M. Vance, Robert McMains, Eliza H. Watson, Sidney Speed, William C. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams John H. Rice, Theodore M. Sharp, Robert T. Davis, George Neilist, Margaret C. McMains, John W. Hurley, Henry T. Schenck, Thomas J. Houlehan, Frank S. Van Dyke, George C. Fox, Armina J.
92 Cox, Elizabeth Clemson, Margaret Speed, Thomas J. Harp, Mary E. Osburn, Edwin A. Brower, James Walter Grimes, Vona Dickerson, John C. Wingate, Anna E. Young, Wesley W. Young, James W. Dickerson, Defendants.

I hereby certify that I dismissed the ancillary bill of complaint in the above cause of the Supreme Tribe of Ben Hur vs. Aurelia J. Cauble, et al., solely because of the lack of jurisdiction of the United States District Court for the District of Indiana to entertain said ancillary bill of complaint.

I dismissed said ancillary bill of complaint upon a motion filed by the defendants thereto and also upon my own motion.

The jurisdictional question arose as follows:

On April 16th, 1913, George Balme, a citizen of the State of Kentucky, and five hundred and twenty-three other complainants residing in fifteen different states of the Union outside of the State of Indiana, and one complainant residing in the Dominion of Canada, filed their bill of complaint in the United States District Court for the District of Indiana against the Supreme Tribe of Ben-Hur, a fraternal beneficiary society organized under the laws of the State of Indiana with its principal office at Crawfordsville in said state and district aforesaid, and its officers, all citizens and residents of the
93 State of Indiana, to enjoin what was claimed to be an unlawful use of trust funds of said defendant, Supreme Tribe of Ben-Hur, in which all the complainants and other members of Class A of said Supreme Tribe of Ben-Hur had a common but indivisible interest, and attacking a plan of reorganization adopted by the Supreme legislative body of the Supreme Tribe of Ben-Hur to prevent threatened insolvency and disruption of said society; the suit was a class suit brought and prosecuted for the benefit of all members of Class A of said society of whom there were more than seventy thousand at the time of the commencement of said suit, towit, April 16th, 1913; an answer was filed by the defendants setting up a full answer to the facts averred in the bill of complaint; a long hearing was had before the Master, the Master filed a written report and in this report it was found that this was strictly a true class suit presenting questions of common interest to all the members of Class A and affecting their joint interests in funds and in internal management of the society, written exceptions were filed thereto both by complainants and defendants, and a final decree was entered dismissing complainants' bill of complaint for want of equity, which said decree has never been appealed from, modified or vacated, but is still in full force and effect. No Indiana members of the society intervened or were made parties to the suit by any subsequent proceeding prior to the filing of said ancillary bill in said cause.

In 1919 the defendants to the ancillary bill, all being residents of the State of Indiana, and all having been members of said Class A of said Supreme Tribe of Ben-Hur or being beneficiaries of persons
94 who were members of said Class A at the time of the commencement, prosecution and final decree in said cause of Balme and others vs. Supreme Tribe of Ben-Hur and others, commenced actions in the Circuit Court of Montgomery County, Indiana, and in the Circuit Court of Marion County, Indiana, in which they seek to relitigate questions determined in favor of the defendant, Supreme Tribe of Ben-Hur in said suit brought by George Balme and others in the United States District Court for the District of Indiana.

The ancillary bill of complaint filed herein seeks to enjoin the maintenance and prosecution of the actions commenced by said several defendants to the ancillary bill of complaint in the State Courts of Indiana, all of which actions were commenced subsequent to the final decree in said cause of Balme and others vs. the Supreme Tribe of Ben-Hur, which final decree was entered and rendered on the 1st day of July, 1915.

That a copy of said ancillary bill, together with the motion of the defendants thereto to dismiss the same, and the order of dismissal are contained in the judgment roll filed herein, to which reference is made for a more particular description thereof, and that there is attached to said ancillary bill contained in said judgment roll a full copy of all the pleadings and proceedings had in said cause of Balme, et al, vs. the Supreme Tribe of Ben Hur, et al, together with the report and findings of the Master and the judgment and decree of the court.

I dismissed the ancillary bill of complaint on the ground only that members of Class A of the Supreme Tribe of Ben-Hur residing in the State of Indiana could not be bound by representation by complainants in the class suit of Balme, et al. vs. the Supreme Tribe of Ben Hur, et al., as the presence of such Indiana members of Class
A as plaintiffs would have ousted the jurisdiction of the court
95 in the main suit, such jurisdiction being based only on diversity of citizenship and not on any Federal question, and that therefore the decree in the main case was and is not res adjudicata as to Indiana members of Class A of the Supreme Tribe of Ben-Hur.

The only question which arose on the dismissal of the ancillary bill of complaint was the question of jurisdiction, and such question of jurisdiction only, as above stated, is hereby certified to the Supreme Court of the United States for its decision thereon.

Feb. 4, 1920. FRANCIS E. BAKER,
Judge.

96 And afterwards, to-wit: at the November Term, 1919, of said Court, on the 16th day of February, 1920, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

On this, the 16th day of February, 1920, comes the complainant herein, The Supreme Tribe of Ben-Hur, by Crane & McCabe and Miller, Dailey & Thompson, its Solicitors, and come also the defendants by their Solicitors, Messrs. Bachelder & Bachelder and Mr. Frank G. West, and the complainant having presented to the court its petition praying for the allowance of an appeal to the Supreme Court of the United States, intended to be made and taken by it, and also praying that a transcript of the record, proceedings and papers upon which the decree herein was written and rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

And the court now fixes the appeal bond to be given by the complainant in the sum of Five Hundred Dollars ($500.00) with United States Fidelity and Guaranty Company as surety thereon, and the said complainant now files said bond with United States Fidelity & Guaranty Company as surety thereon, in the penal sum of Five Hundred Dollars ($500.00) conditioned as required by law, and said bond and the surety thereon is approved by the court.

Now, in consideration thereof, the court does allow the said appeal.

97 In the District Court of the United States for the District of Indiana.

In Equity.

No. 7.

GEORGE BALME et al., Complainant,

vs.

THE SUPREME TRIBE OF BEN-HUR, ROYAL H. GERARD, JOHN C. Snyder, Samuel E. Voris, Jesse F. Davidson, John R. Bonnell, George Hazen, Defendants.

THE SUPREME TRIBE OF BEN-HUR, Complainant,

vs.

AURELIA J. CAUBLE, MARTHA M. BROWN, HELEN B. BURROUGHS, O'Neal Watson, Harry M. Vance, Robert McMains, Eliza H. Watson, Sidney Speed, William C. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams, John H. Rice, Theodore M. Sharp, Robert T. Davis, George Neilist, Margaret C. McMains, John W. Hurley, Henry T. Schenck, Thomas J. Houlehan, Frank S. Van Dyke, George C. Fox, Armina J. Cox, Elizabeth Clemson, Margaret Speed, Thomas J. Harp, Mary
98 E. Osburn, Edwin A. Brower, James Walter Grimes, Vona Dickerson, John C. Wingate, Anna E. Young, Wesley W. Young, James W. Dickerson, Defendants.

Notice.

To the Defendants in the above entitled cause:

Please take notice that on the 16th day of February, A. D. 1920, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the complainant, through its solicitors, will appear before the Honorable Albert B. Anderson, Judge of the United States for the District of Indiana, in the court room in the Federal Building, in the City of Indianapolis, Indiana, and will present the petition of the Supreme Tribe of Ben-Hur, praying an appeal in the

said above entitled cause to the Supreme Court of the United States, at which time and place you may appear if you see fit.

CRANE AND McCABE,
MILLER, DAILEY & THOMPSON,
Solicitors for Complainant.

The undersigned solicitors for the defendants in the above entitled cause acknowledge service of the above and foregoing notice on this the 11th day of February, A. D. 1920, and the receipt of a copy thereof.

BACHELDER & BACHELDER,
GUILFORD A. DEITCH,
FRANK C. WEST,
Solicitors for Defendants.

99 In the District Court of the United States for the District of Indiana.

In Equity.

No. 7.

GEORGE BALME et al., Complainant,

vs.

THE SUPREME TRIBE OF BEN-HUR, ROYAL H. GERARD, JOHN C. Snyder, Samuel E. Voris, Jesse F. Davidson, John R. Bonnell, George Hazen, Defendants.

THE SUPREME TRIBE OF BEN-HUR, Complainant,

vs.

AURELIA J. CAUBLE, MARTHA M. BROWN, HELEN B. BURROUGHS, O'Neal Watson, Harry M. Vance, Robert McMains, Eliza H. Watson, Sidney Speed, William C. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams, John H. Rice, Theodore M. Sharp, Robert T. Davis, George Neilist, Margaret C. McMains, John W. Hurley, Henry T. Schenck, Thomas J. Houlehan, Frank S. Van Dyke, George C. Fox, Armina J. Cox, Elizabeth Clemson, Margaret Speed, Thomas J. Harp, Mary
100 E. Osburn, Edwin A. Brower, James Walter Grimes, Vona Dickerson, John C. Wingate, Anna E. Young, Wesley W. Young, James W. Dickerson, Defendants.

Petition for Appeal.

To the Honorable Judge of the District Court of the United States for the District of Indiana sitting in chancery:

Your petitioner, The Supreme Tribe of Ben Hur, respectfully represents unto your Honor:

That heretofore on the 26th day of September, 1919, it filed its certain ancillary bill of complaint in the above cause in the United States District Court for the District of Indiana, against the above named defendants, and that thereafter on the 4th day of February, 1920, a decree was entered by this honorable court ordering the said ancillary bill of complaint dismissed at complainant's costs, said dismissal being made solely on the ground of want of jurisdiction of the court to entertain said ancillary bill of complaint; and on the same date said court made and entered a certificate that said ancillary bill of complaint was dismissed solely because of such lack of jurisdiction and stating how said jurisdictional question arose; from which decree of dsmissal your petitioner hereby prays an appeal to the Supreme Court of the United States.

Your petitioner alleges that in said final decree and order of dismissal on the ground of want of jurisdiction the following errors were committed:

101 First. In decreeing that said ancillary bill of complaint should be dismissed because said District Court of the United States did not have jurisdiction to entertain said ancillary bill of complaint.

Second. In not retaining jurisdiction of said ancillary bill of complaint and proceeding to a decree on the merits.

Third. In not decreeing that the final decree rendered in the United States District Court for the District of Indiana on April 16, 1913, in the main case, wherein George Balme, a citizen of Kentucky and five hundred twenty-three (523) other complainants, residing in fifteen (15) different States of the Union outside of the State of Indiana and one complainant residing in the Dominion of Canada, filed their bill of complaint in the United States District Court for the District of Indiana against the Supreme Tribe of Ben-Hur, a fraternal beneficiary society, organized under the laws of the State of Indiana with its principal office at Crawfordsville in said State and District and its officers all citizens and residents of the State of Indiana, to enjoin what was claimed to be an unlawful use of trust funds of said defendant, The Supreme Tribe of Ben-Hur, in which all the complainants and other members of Class A of said Supreme Tribe of Ben-Hur had a common but indivisible interest and attacking a plan of reorganization adopted by the Supreme Legislative body of the Supreme Tribe of Ben-Hur to prevent threatened insolvency and disruption of said society, which suit was a class suit brought and prosecuted for the benefit of all members of Class A of said Society of which there were more than seventy thousand members at the time the suit was commenced and in which suit an an-
102 swer was filed by the defendants setting up a full answer to the facts averred in the bill of complaint and in which there was a long hearing before the Master; the Master filed a written report and in this report it was found that the suit was strictly a class suit presenting questions of common interest to all members of said Class A and affecting their joint interest in funds and in the

internal management of the society, written exceptions were filed thereto both by complainants and defendants and a final decree was entered dismissing complainant's bill of complaint for want of equity, which said decree has never been appealed from, vacated or modified, but is still in full force and effect, was res adjudicata as to suits commenced after said final decree by residents of the State of Indiana, all of whom were members of said Class A of said Supreme Tribe of Ben-Hur or beneficiaries of persons who were members of said Class A at the time of the commencement, prosecution and final decree in said main case.

Fourth. In not decreeing and deciding that the final decree in the main case was binding on all members of Class A of the Supreme Tribe of Ben-Hur and the beneficiaries of deceased members, whether residing inside the State of Indiana or outside thereof.

Fifth. In not decreeing that the final decree in the main case was binding and conclusive on all Class A members of the Supreme Tribe of Ben-Hur at the time said action was commenced and maintained and at the time of said final decree therein, including the beneficiaries of deceased members, without reference to their residence.

Sixth. In not decreeing that the final decree of the United States District Court for the District of Indiana in the main case of Ralme et al. vs. The Supreme Tribe of Ben-Hur was valid and bind-
163 ing on all Class A members of the Supreme Tribe of Ben-Hur and in decreeing that the Indiana members of said Class A could relitigate the questions finally adjudged against them in said main case.

Seventh. In not retaining jurisdiction of complainant's ancillary bill and deciding the same on its merits.

Eighth. In refusing to enjoin defendants to the ancillary bill of complaint from relitigating in the State Court the questions decided adversely to them as members of Class A of the Supreme Tribe of Ben-Hur in the decree in the main case.

For all of which errors and imperfections in the decree rendered herein dismissing complainant's ancillary bill for want of jurisdiction, your petitioner is desirous of appealing to the Supreme Court of the United States as hereinbefore alleged.

Your petitioner, therefore, prays for an order granting it an appeal to the Supreme Court of the United States from the decree and decision rendered in this cause dismissing its ancillary bill for want of jurisdiction and that the clerk of this court be directed to issue a citation of the appeal thereof to the appellees herein and to each of them.

THE SUPREME TRIBE OF BEN-HUR,
By CRANE & McCABE,
MILLER, DAILEY & THOMPSON,
Its Solicitors.

The undersigned solicitors for the defendants in the above entitled cause acknowledge service of the above and foregoing petition for an appeal, and the receipt of a copy thereof this 11th day of February, 1920.

BACHELDER & BACHELDER,
GUILFORD A. DEITCH,
FRANK G. WEST,
Solicitors for Defendants.

104 In the District Court of the United States for the District of Indiana.

In Equity.

No. 7.

GEORGE BALME et al., Complainants,

vs.

THE SUPREME TRIBE OF BEN-HUR, ROYAL H. GERARD, JOHN C. Snyder, Samuel E. Voris, Jesse F. Davidson, John R. Bonnell, George Hazen, Defendants.

THE SUPREME TRIBE OF BEN-HUR, Complainant,

vs.

AURELIA J. CAUBLE, MARTHA M. BROWN, HELEN B. BURROUGHS, O'Neal Watson, Harry M. Vance, Robert McMains, Eliza H. Watson, Sidney Speed, William C. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams, John H. Rice, Theodore M. Sharp, Robert T. Davis, George Neilist, Margaret C. McMains, John W. Hurley, Henry T. Schenck, Thomas J. Houlehan, Frank S. Van Dyke, George C. Fox, Armina J. Cox, Elizabeth Clemson, Margaret Speed, Thomas J. Harp, Mary E. Osborn, Edwin A. Brower, James Walter Grimes, Vona
105 Dickerson, John C. Wingate, Anna E. Young, Wesley W. Young, James W. Dickerson, Defendants.

Assignment of Errors to the Supreme Court of the United States.

Comes now the Supreme Tribe of Ben-Hur, by Crane & McCabe and Miller, Dailey & Thompson, its solicitors, and says that in the record and proceedings, and in rendering the decree in the above cause dismissing complainant's ancillary bill for want of jurisdiction, there is manifest error in this, towit:

First. In decreeing that said ancillary bill of complaint should be dismissed because said District Court of the United States did not have jurisdiction to entertain said ancillary bill of complaint.

Second. In not retaining jurisdiction of said ancillary bill of complaint and proceeding to a decree on the merits.

Third. In not decreeing that the final decree rendered in the United States District Court for the District of Indiana on April 16, 1923, in the main case, wherein George Balme, a citizen of Kentucky and five hundred twenty-three (523) other complainants, residing in fifteen (15) different States of the Union outside of the State of Indiana and one complainant residing in the Dominion of Canada, filed their bill of complaint in the United States District Court for the District of Indiana against the Supreme Tribe
106 of Ben-Hur, a fraternal beneficiary society, organized under the laws of the State of Indiana with its principal office at Crawfordsville in said State and District and its officers all citizens and residents of the State of Indiana, to enjoin what was claimed to be an unlawful use of trust funds of said defendant, The Supreme Tribe of Ben-Hur, in which all the complainants and other members of Class A of said Supreme Tribe of Ben-Hur had a common but indivisible interest, and attacking a plan of reorganization adopted by the Supreme Legislative body of the Supreme Tribe of Ben-Hur to prevent threatened insolvency and disruption of said society, which suit was a class suit brought and prosecuted for the benefit of all members of Class A of said Society of which there were more than seventy thousand members at the time the suit was commenced and in which suit an answer was filed by the defendants setting up a full answer to the facts averred in the bill of complaint and in which there was a long hearing before the Master; the Master filed a written report and in this report it was found that the suit was strictly a class suit presenting questions of common interest to all members of said Class A and affecting their joint interest in funds and in the internal management of the society, written exceptions were filed thereto both by complainants and defendants and a final decree was entered dismissing complainant's bill of complaint for want of equity, which said decree has never been appealed from, vacated or modified, but is still in full force and effect, was res adjudicata as to suits commenced after said final decree by residents of the State of Indiana, all of whom were members of said Class A of said Supreme Tribe of Ben-Hur or beneficiaries of persons who were members of said Class A at the time of the commencement, prosecution and final decree in said main case.

107 Fourth. In not decreeing and deciding that the final decree in the main case was binding on all members of Class A of the Supreme Tribe of Ben-Hur and the beneficiaries of deceased members, whether residing inside the State of Indiana or outside thereof.

Fifth. In not decreeing that the final decree in the main case was binding and conclusive on all Class A members of the Supreme Tribe of Ben-Hur at the time said action was commenced and maintained and at the time of said final decree therein, including the beneficiaries of deceased members, without reference to their residence.

Sixth. In not decreeing that the final decree of the United States District Court for the District of Indiana in the main case of Balme et al. vs. The Supreme Tribe of Ben-Hur was valid and binding

on all Class A members of the Supreme Tribe of Ben-Hur and in decreeing that the Indiana members of said Class A could relitigate the questions finally adjudged against them in said main case.

Seventh. In not retaining jurisdiction of complainant's ancillary bill and deciding the same on its merits.

Eighth. In refusing to enjoin defendants to the ancillary bill of complaint from relitigating in the State Court the questions decided adversely to them as members of Class A of the Supreme Tribe of Ben-Hur in the decree in the main case.

By reason whereof complainant prays that said decree may be reversed and the court below ordered to hear and determine complainant's ancillary bill of complaint on its merits and for its costs herein and for all other relief in the premises as equity may require and which to your Honor shall seem meet.

CRANE & McCABE,
MILLER, DAILEY & THOMPSON,
WILLIAM H. THOMPSON,
Solicitors for Complainant.

108 The undersigned solicitors for the defendants in the above entitled cause acknowledge service of the above and foregoing assignment of errors to the Supreme Court of the United States and a receipt of a copy thereof this 16th day of February, 1920.

RACHELDER & RACHELDER,
GUILFORD A. DEITCH,
FRANK G. WEST,
Solicitors for Defendants.

169 In the District Court of the United States for the District of Indiana.

In Equity.

No. 7.

GEORGE BALME et al., Complainants,

vs.

THE SUPREME TRIBE OF BEN-HUR, ROYAL H. GERARD, JOHN C. SNYDER, Samuel E. Voris, Jesse F. Davidson, John R. Bennell, George Hazen, Defendants.

THE SUPREME TRIBE OF BEN-HUR, Complainant,

vs.

AURELIA J. CAUBLE, MARTHA M. BROWN, HELEN B. BURROUGHS, O'Neal Watson, Harry M. Vance, Robert McMains, Eliza H. Watson, Sidney Speed, William C. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams, John H. Rice, Theodore M. Sharp, Robert T. Davis, George Neilist, Margaret C. McMains, John W. Hurley, Henry T. Schenck, Thomas J. Houlehan, Frank S. Van Dyke, George C. Fox, Armina J.
110 Cox, Elizabeth Clemson, Margaret Speed, Thomas J. Harp, Mary E. Osburn, Edwin A. Brower, James Walter Grimes, Vona Dickerson, John C. Wingate, Anna E. Young, Wesley W. Young, James W. Dickerson, Defendants.

Know all men by these presents: That, we, The Supreme Tribe of Ben-Hur, as principal, and United States Fidelity & Guaranty Co. of Baltimore, Md., as surety, are held and firmly bound unto the defendants, above named, in the full sum of Five Hundred Dollars ($500.00) to be paid to said defendants, their attorneys, executors, administrators and assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors jointly and severally by these presents.

Sealed with our seals and dated this 16th day of February, A. D. 1920.

The condition of the above obligation is such that:

Whereas, lately in said court in a suit between the principal in this bond and the defendants, above named, a decree was rendered against the complainant and in favor of said defendants, dismissing complainant's ancillary bill of complaint for want of jurisdiction and entering a judgment for costs against complainant; and

Whereas, the said Supreme Tribe of Ben-Hur having prayed an appeal from said decree and having obtained a citation directed to the said defendants citing and admonishing them to be and ap-

111 pear at the Supreme Court of the United States to be held at Washington, District of Columbia, on the 15th day of March, A. D. 1920, next;

Now, if the said principal shall prosecute said appeal with effect and shall pay all costs of said appeal and shall pay the judgment above mentioned, if it fails to make the said appeal good, then the above obligation to be void, otherwise to remain in full force and effect.

THE SUPREME TRIBE OF BEN-HUR.
By R. H. GERARD,
President, Principal.

Attest:

JOHN C. SNYDER.
Secretary.

UNITED STATES FIDELITY & GUARANTY COMPANY, BALTIMORE, MD.
[SEAL.] LOUIS W. WITTE,
Attorney-in-Fact, Surety.

Taken and approved by me this 16th day of February, A. D. 1920.

ALBERT B. ANDERSON,
Judge.

112 In the District Court of the United States for the District of Indiana.

No 7. In Equity.

GEORGE BALME et al., Complainants,

vs.

THE SUPREME TRIBE OF BEN-HUR, ROYAL H. GERARD, JOHN C. SNYDER, Samuel E. Voris, *Jesse* F. Davidson, John R. Bonnell, George Hazen, Defendants.

THE SUPREME TRIBE OF BEN-HUR, Complainant,

vs.

AURELIA J. CAUBLE, MARTHA M. BROWN, HELEN B. BURROUGHS, O'Neal Watson, Harry M. Vance, Robert McMains, Eliza H. Watson, Sidney Speed, William C. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams, John H. Rice, Theodore M. Sharp, Robert T. Davis, George Neilist, Margaret C. McMains, John W. Hurley, Henry T. Schenck, Thomas J. Houlehan, Frank S. Van Dyke, George C. Fox, Armina J.
113 Cox, Elizabeth Clemson, Margaret Speed, Thomas J. Harp, Mary E. Osburn, Edwin A. Brower, James Grimes, Vona Dickerson, John C. Wingate, Anna E. Young, Wesley W. Young, James W. Dickerson, Defendants.

Order Enlarging Time to File Record.

It appearing to the court that the complainant in the above entitled cause has been allowed an appeal to the Supreme Court of the United States and a citation thereon has been issued and served, which citation was made returnable on the 15th day of March, 1920, and that the rules of said Supreme Court require the record of said cause to be filed in the office of the clerk of the Supreme Court of the United States on or before said return date, towit, the 15th day of March, 1920, unless prior to said last named date the time for such filing shall be enlarged, and said complainant having appeared before this court asking that said time should be enlarged and having shown good cause therefor and the defendants having consented thereto;

It is ordered that the time within which said complainant shall file the record on said appeal in the office of the clerk of the Supreme Court of the United States be and the same is hereby enlarged so as to extend to and include the 15th day of April, 1920.

Dated this 16th day of February, 1920.

_____,

Judge.

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Citation.

THE UNITED STATES OF AMERICA, *ss:*

To Aurelia J. Cauble, Martha M. Brown, Helen B. Burroughs, O'Neal Watson, Harry M. Vance, Robert McMains, Eliza H. Watson, Sidney Speed, William C. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams, John H. Rice, Theodore M. Sharp, Robert T. Davis, George Neilist, Margaret C. McMains, John W. Hurley, Henry T. Schenck, Thomas J. Houlehan, Frank S. Van Dyke, George C. Fox, Armina J. Cox, Elizabeth Clemson, Margaret Speed, Thomas J. Harp, Mary E. Osburn, Edwin A. Brower, James Walter Grimes, Vona Dickerson, John C. Wingate, Anna E. Young, Wesley W. Young, and James W. Dickerson:

Whereas, the Supreme Tribe of Ben-Hur has lately appealed to the Supreme Court of the United States from a decree and judgment lately rendered in the District Court of the United States for the District of Indiana, made and entered in favor of you, wherein and whereby the court dismissed the ancillary bill of complaint on the sole ground that said District Court did not have jurisdiction, and has filed the security required by law.

You are, therefore, cited to appear before the said Supreme Court at the City of Washington, District of Columbia, Monday, the 15th day of March, 1920, next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand and seal this 16th day of February, A. D. 1920.

ALBERT B. ANDERSON,
Judge.

Service of the above citation is admitted and the receipt of a copy thereof acknowledged this 16th day of February, 1920.

BACHELDER & BACHELDER.
FRANK G. WEST.
GUILFORD A. DEITCH.
Solicitors for Defendants.

[Endorsed:] No. 7. George Balme et al. vs. Supreme Tribe of Ben-Hur et al. Citation.

115 In the District Court of the United States for the District of Indiana.

No. 7. In Equity.

GEORGE BALME et al., Complainant,

vs.

THE SUPREME TRIBE OF BEN-HUR, ROYAL H. GERARD, JOHN C. Snyder, Samuel E. Voris, Jesse F. Davidson, John R. Bonnell, George Hazen, Defendants.

THE SUPREME TRIBE OF BEN-HUR, Complainant,

vs.

AURELIA J. CAUBLE, MARTHA M. BROWN, HELEN B. BURROUGHS, O'Neal Watson, Harry M. Vance, Robert McMains, Eliza H. Watson, Sidney Speed, William C. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams, John H. Rice, Theodore M. Sharp, Robert T. Davis, George Neilist, Margaret C. McMains, John W. Hurley, Henry T. Schenck, Thomas J. Houlehan, Frank S. Van Dyke, George C. Fox, Armina J. Cox, Elizabeth Clemson, Margaret Speed, Thomas J. Harp, Mary E.
116 Osburn, Edwin A. Brower, James Walter Grimes, Vona Dickerson, John C. Wingate, Anna E. Young, Wesley W. Young, James W. Dickerson, Defendants.

Præcipe.

To Noble C. Butler, Clerk of the United States District Court for the District of Indiana:

Will the clerk please include and insert in the record on appeal of the above entitled cause in equity to the Supreme Court of the United States the following pleadings, files and papers, towit:

Complainant's ancillary bill of complaint and the exhibits thereto attached.

Subpœnas and returns of marshal thereon.

Motions of defendants to dismiss said ancillary bill of complaint.

Order designating Hon. Francis E. Baker to hear said cause.

Final decree and order dismissing said ancillary bill of complaint on the ground of want of jurisdiction.

Opinion of Hon. Francis E. Baker on the dismissal of said ancillary bill of complaint for want of jurisdiction.

Certificate of Hon. Francis E. Baker, Judge, that he dismissed the ancillary bill of complaint solely because of the lack of jurisdiction of the United States District Court for the District of Indiana to entertain said ancillary bill of complaint.

Complainant's petition for an appeal.

Notice to defendants of the time and place of hearing on complainant's petition for appeal.

117 Citation.

Order of court allowing appeal.

Complainant's appeal bond and approval endorsed thereon.

Order of court extending time for filing transcript.

Complainant's assignment of errors.

Also including on each of the above papers acknowledgment of service on appellees as the same appear thereon.

Also this præcipe.

Dated this 16th day of February, 1920.

CRANE AND McCABE,
MILLER, DAILEY & THOMPSON,
Solicitors for Complainant.

The undersigned solicitors for defendants and appellees in said cause acknowledge service of the above and foregoing præcipe and receipt of a copy thereof this 16th day of February, 1920.

BACHELDER & BACHELDER.
GUILFORD A. DEITCH,
FRANK G. WEST,
Solicitors for Defendants and Appellees.

118 In the District Court of the United States for the District of Indiana.

I, Noble C. Butler, Clerk of the District Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings, according to the præcipe, in the above entitled cause, as the same appears of record in my office.

Witness my hand and the seal of said Court at Indianapolis, in said District, this 24" day of February, 1920.

[Seal District Court of the United States, District of Indiana.]

NOBLE C. BUTLER,
Clerk.

119 In the Supreme Court of the United States.

THE SUPREME TRIBE OF BEN HUR

vs.

AURELIA J. CAUBLE et al.

On Appeal from the District Court of the United States for the District of Indiana.

Stipulation as to Printing Record.

It is hereby stipulated by the appellant and appellees that the printed record in this case shall contain everything appearing in the transcript of record filed in this court, except a printed pamphlet containing the constitution, laws, rules and regulations governing The Supreme Tribe and subordinate courts adopted January 16, 1894 amended June 18th to 20th, 1912, which is a printed pamphlet of one hundred eighty-four (184) pages in length and appears as page 29 of said transcript and said pamphlet containing said constitution, laws, rules and regulations shall not be printed as a part of the printed record in this cause, but shall be wholly omitted.

CRANE & McCABE,
MILLER, DAILEY & THOMPSON,
Solicitors for Appellant.
FRANK G. WEST,
BACHELDER & BACHELDER,
Solicitors for Appellees.

119½ [Endorsed:] Original. No. —. In the Supreme Court of the United States, on Appeal from the District Court of the United States for the District of Indiana. The Supreme Tribe of Ben Hur vs. Aurelia J. Cauble et al. Stipulation as to Printing Record. Miller, Dailey & Thompson, Indianapolis.

Endorsed on cover. File No. 27,545. Indiana D. C. U. S. Term No. 790. The Supreme Tribe of Ben-Hur, appellant, vs. Aurelia J. Cauble et al. Filed March 12th, 1920. File No. 27,545.

No. 274.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

THE SUPREME TRIBE OF BEN-HUR,
Appellant,

vs.

AURELIA CAUBLE, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

JOINT MOTION TO ADVANCE CASE.

BENJAMIN CRANE,
CHARLES M'CABE,
SAMUEL D. MILLER,
FRANK C. DAILEY,
WM. H. THOMPSON,
Attorneys for Appellant.
WM. C. BACHELDER,
Attorney for Appellees.

E. A. HARDEN PRINT, INDIANAPOLIS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

THE SUPREME TRIBE OF BEN-HUR,
Appellant,
vs.
AURELIA CAUBLE, ET AL.,
Appellees.

No. 274.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

JOINT MOTION TO ADVANCE CASE.

Appellant and appellees respectfully move the Court to advance this cause for hearing, for the reason that it is an appeal from the District Court of the United States for the District of Indiana, where the only question in issue is the question of the jurisdiction of said District Court.

BENJAMIN CRANE,
CHARLES M'CABE,
SAMUEL D. MILLER,
FRANK C. DAILEY,
WM. H. THOMPSON,
Attorneys for Appellant.
WM. C. BACHELDER,
Attorney for Appellees.

IN THE

Supreme Court of The United States

OCTOBER TERM, 1919.

No. [redacted]274

THE SUPREME TRIBE OF BEN-HUR,
Appellant,

v.

AURELIA J. CAUBLE ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

BRIEF AND ARGUMENT FOR APPELLANT.

BENJAMIN CRANE,
CHARLES M. McCABE,
SAMUEL D. MILLER,
FRANK C. DAILEY,
WILLIAM H. THOMPSON,
Attorneys for Appellant.

E. A. HARDIN PRINT, INDIANAPOLIS

SUBJECT INDEX.

ALPHABETICAL INDEX OF SUBJECTS.

ALPHABETICAL LIST OF CASES REFERRED TO.

IN THE

Supreme Court of The United States

OCTOBER TERM, 1919.

THE SUPREME TRIBE OF BEN-HUR,
Appellant,
v.
AURELIA J. CAUBLE ET AL.,
Appellees.
No. 790.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

STATEMENT OF THE CASE.

Question Involved.

Appellant, The Supreme Tribe of Ben-Hur, a fraternal beneficiary association, organized under the laws of the State of Indiana, filed its ancillary bill of complaint in the United States District Court for the District of Indiana against Aurelia J. Cauble and others, seeking to enjoin appellees (defendants), all of whom are resident of the State of Indiana, from relitigating in the state courts questions determined and decided in favor of appellant by the United States District Court for the District of Indiana, in a class

suit brought by George Balme and other non-resident members of Class A of appellant. Appellees were not named as defendants in the main case, but were members of Class A, for whose benefit George Balme and others brought and prosecuted said class suit. Appellant claimed that appellees were bound by representation by the decree in the main suit, and should be enjoined from relitigating the issues there decided in appellant's favor.

The court below dismissed appellant's bill of complaint for want of jurisdiction (Tr., p. 159), and the case is here on appeal and on a certificate of dismissal for want of jurisdiction (Tr., pp. 160 and 161).

The ground assigned by the court for dismissal for want of jurisdiction was that appellees and other members of the Supreme Tribe of Ben-Hur "residing in the State of Indiana could not be bound by representation by complainants in the class suit of *Balme et al. v. The Supreme Tribe of Ben-Hur et al.*, as the presence of such Indiana members of Class A as plaintiffs would have ousted the jurisdiction of the court in the main suit, such jurisdiction being based only on diversity of citizenship and not on any Federal question, and that therefore the decree in the main case was and is not res adjudicata as to Indiana members of Class A of the Supreme Tribe of Ben-Hur."

Appellant's contention is that where a class suit was brought and prosecuted in good faith in a Federal Court in the state of defendant's residence by several hundred members of a particular class of a fraternal beneficiary society, the decree in such suit binds all the members of the class residing within and without the state; that all such members residing within the state had the right, after the class suit was commenced, to intervene, and that their

joinder as intervenors would not have ousted jurisdiction which had once attached; that a decree in a class suit necessarily binds all members of the class, especially where, as here, the interest of the members of the class in the funds of the society is indivisible.

STATEMENT OF FACTS.

Certificate of Dismissal on Jurisdictional Grounds.

The certificate of dismissal on jurisdictional grounds (omitting the caption and signature) is as follows:

> "I hereby certify that I dismissed the ancillary bill of complaint in the above cause of the *Supreme Tribe of Ben Hur vs. Aurelia J. Cauble et al.*, solely because of the lack of jurisdiction of the United States District Court for the District of Indiana to entertain said ancillary bill of complaint.
>
> "I dismissed said ancillary bill of complaint upon a motion filed by the defendants thereto and also upon my own motion.
>
> "The jurisdictional question arose as follows:
>
> "On April 16, 1912, George Balme, a citizen of the State of Kentucky, and five hundred and twenty-three other complainants residing in fifteen different states of the Union outside of the State of Indiana, and one complainant residing in the Dominion of Canada, filed their bill of complaint in the United States District Court for the District of Indiana against the Supreme Tribe of Ben-Hur, a fraternal beneficiary society organized under the laws of the State of Indiana with its principal office at Crawfordsville in said state and district aforesaid, and its officers, all citizens and residents of the State of Indiana, to enjoin what was claimed to be an unlawful use of trust funds of said defendant, Supreme Tribe of Ben-Hur in which all the complainants and other members of Class A of said Supreme Tribe of Ben-Hur had a common but indi-

visible interest, and attacking a plan of reorganization adopted by the Supreme legislative body of the Supreme Tribe of Ben-Hur to prevent threatened insolvency and disruption of said society; the suit was a class suit brought and prosecuted for the benefit of all members of Class A of said society of whom there were more than seventy thousand at the time of the commencement of said suit, to wit, April 16, 1913; an answer was filed by the defendants setting up a full answer to the facts averred in the bill of complaint; a long hearing was had before the Master, the Master filed a written report and in this report it was found that this was strictly a true class suit presenting questions of common interest to all the members of Class A and affecting their joint interests in funds and in internal management of the society, written exceptions were filed thereto both by complainants and defendants, and a final decree was entered dismissing complainants' bill of complaint for want of equity, which said decree has never been appealed from, modified or vacated, but is still in full force and effect. No Indiana members of the society intervened or were made parties to the suit by any subsequent proceeding prior to the filing of said ancillary bill in said cause.

"In 1919 the defendants to the ancillary bill, all being residents of the State of Indiana, and all having been members of said Class A of said Supreme Tribe of Ben-Hur or being beneficiaries of persons who were members of said Class A at the time of the commencement, prosecution and final decree in said cause of *Balme and others vs. Supreme Tribe of Ben-Hur and others*, commenced actions in the Circuit Court of Montgomery County, Indiana, and in the Circuit Court of Marion County, Indiana, in which they seek to relitigate questions determined in favor of the defendant, Supreme Tribe of Ben-Hur, in said suit brought by George Balme and others in the United States District Court for the District of Indiana.

"The ancillary bill of complaint filed herein seeks to enjoin the maintenance and prosecution of the actions commenced by said several defendants to the ancillary bill of complaint in the State Courts of Indiana, all of which actions were commenced subsequent to the final decree in said cause of *Balme and others vs. The Supreme Tribe of Hen-Hur*, which final decree was entered and rendered on the 1st day of July, 1915.

"That a copy of said ancillary bill, together with the motion of the defendants thereto to dismiss the same, and the order of dismissal are contained in the judgment roll filed herein, to which reference is made for a more particular description thereof, and that there is attached to said ancillary bill contained in said judgment roll a full copy of all the pleadings and procedings had in said cause of *Balme et al. vs. The Supreme Tribe of Ben-Hur et al.*, together with the report and findings of the Master and the judgment and decree of the court.

"I dismissed the ancillary bill of complaint on the ground only that members of Class A of the Supreme Tribe of Hen-Hur residing in the State of Indiana could not be bound by representation by complainants in the class suit of *Balme et al. vs. The Supreme Tribe of Ben-Hur et al.*, as the presence of such Indiana members of Class A as plaintiffs would have ousted the jurisdiction of the court in the main suit, such jurisdiction being based only on diversity of citizenship and not on any Federal question, and that therefore the decree in the main case was and is not *res adjudicata* as to Indiana members of Class A of the Supreme Tribe of Ben-Hur.

"The only question which arose on the dismissal of the ancillary bill of complaint was the question of jurisdiction, and such question of jurisdiction only, as above stated, is hereby certified to the Supreme Court of the United States for its decision thereon."

(Transcript, pp. 160 and 161.)

Complaint.

The ancillary bill of complaint alleges:

That complainant is a fraternal beneficiary association organized under the laws of Indiana, and that all of the defendants are residents of the State of Indiana.

That on April 16, 1913, George Balme and more than five hundred other complainants, all of whom were members of Class A of the Supreme Tribe of Ben-Hur, filed in the United States District Court for the District of Indiana their bill of complaint; that complainants were none of them residents of Indiana, but resided in Ohio, Kentucky, Illinois, California, Oregon, Texas, Arkansas, Alabama, Louisiana, Pensylvania, Tennessee and other states; that the defendants were all citizens and residents of Indiana, and that the defendants other than The Supreme Tribe of Ben-Hur were made defendants on account of their official connection and relation with said The Supreme Tribe of Ben-Hur. (Tr., p. 3.)

That defendants filed an answer to said bill; that by the consent of both parties said cause was referred to a master to hear the evidence and report his findings of fact and conclusions of law; that the master made his report, and both defendants and complainants excepted; that such exceptions were heard and a final decree entered dismissing the bill for want of equity; that said decree has never been appealed from, reversed, modified or vacated, but the same is in full force and effect. (Tr., pp. 4 and 5.)

That the bill of complaint in the said suit of *Balme et al. v. Supreme Tribe of Ben-Hur et al.* contained the following averment:

"Third. That each and every of your orators

is a beneficial member of said corporation in good standing, and holds a beneficial certificate or contract of insurance issued to him or her by said corporation. That the date of the beneficial certificate of each and every of your orators is prior to June 1, 1908, and that each and every of your said orators belong to class "A" of the members of said corporation. That there are now over seventy thousand members in said class "A"; that it is impracticable to join all of said class "A" members as complainants herein; that this action is instituted for the benefit of each and every class "A" member of said corporation; that the relief prayed for herein will redound to the benefit of each and every member of of said class "A"; and that the questions involved herein are of common and general interest to each and every member of said class "A".'"

(Tr., p. 5.)

That among the findings of the master was the following:

"That the number of members of Class A on the third Monday of May, 1908, the date of the convening of the biennial convention in that year was approximately 100,000; the certificates issued to said Class A members were not all literally the same and they were distinguished from each other as Schedule 1, Schedule 2, Schedule 3 and Schedule 4, with reference to date of issuance, the oldest certificates being designated as Schedule 1.

"That at the time the bill of complaint was filed there were more than seventy thousand members in said Class A; that on November 1, 1913, there were over forty thousand members in Class A; that on November 1, 1913, there were over forty thousand members in Class A; that it is and at all times since the filing of said bill of complaint has been impracticable to join all of said Class A members as parties hereto; that the questions involved herein are of

common and general interest to each and every member of said Class A."

Upon information and belief, it is alleged that there was at issue, and actually litigated, tried, determined and finally adjudged between the parties to said cause of *Balme et al. v. Supreme Tribe of Ben-Hur et al.* the following questions and propositions:

"1. The right of The Supreme Tribe of Ben-Hur, to create a new class of benefit certificate holders, known as Class B. (The membership in such society up to July 1, 1908, having been in the class thereafter to be designated as Class A); the right of said society to determine that all benefit certificates issued after July 1, 1908, should be Class B certificates, and that no Class A certificates should be issued, after said date, and no new members taken into Class A, from said time, and that all benefit certificates issued after said date should be Class B certificates, and that all new members should become members of Class B, after said date.

"2. The right of The Supreme Tribe of Ben-Hur to require members of Class B to pay different rates for their insurance from members of Class A.

"3. The right of The Supreme Tribe of Ben-Hur to require that the mortuary funds of said two classes be kept separate and distinct, and that the death losses occurring therein, should be paid out of the funds of each class respectively.

"4. The right of The Supreme Tribe of Ben-Hur to authorize members of Class A to transfer, upon a written application, therefor, to Class B, and to take with them into Class B their interest in the mortuary and other funds of the society, created, or arising prior to July 1, 1908, and requiring said Class B members to pay a monthly payment and rate in exces sof that paid by Class A members.

"5. The right of The Supreme Tribe of Ben-Hur to require members remaining in Class A, and not transferring to Class B, to pay a sufficient number of monthly payments, or assessments, to meet the death losses in Class A.

"6. The right of The Supreme Tribe of Ben-Hur to use the expense fund of said society for the purpose of creating Class B, and inducing Class A members to transfer to Class B, and of securing new members in Class B.

"7. Whether The Supreme Tribe of Ben-Hur had used the expense fund in a manner justified by its constitution and by-laws and a general examination of expenditures which had been made by said Supreme Tribe of Ben-Hur, out of its expense fund, and the purpose for which said expenditures had been made, and whether any of said expenditures were made in violation of the rights of Class A members.

"8. The right of The Supreme Tribe of Ben-Hur to use its expense fund, including all questions as to whether payments made out of said fund were equitable and just, or inequitable, wrongful and unlawful; and the question of whether the maintenance of a general expense fund, and the payment of the entire expenses of the society therefrom, was fair, just and legal.

"9. Whether The Supreme Tribe of Ben-Hur had wrongfully, or unlawfully, inaugurated a campaign to persuade and induce the members of said society belonging to Class A to give up and lapse their certificates in Class A, and to apply for and procure membership and certificates in Class B; or whether the action of said The Supreme Tribe of Ben-Hur, and its officers, in that connection, was rightful, just and equitable.

"10. The question of whether the rates in Class A, in effect prior to July 1, 1908, were adequate, or

inadequate, or whether they were sufficient to provide for the current death losses in Class A, and the expenses of the society; or whether it was necessary, in order to prevent the insolvency of The Supreme Tribe of Ben-Hur, to create a new class, and induce the members of the old class, insofar as it was possible to induce them, to transfer to the new class, and the right of the society to take all action necessary for this purpose.

"That there was also involved in said litigation, and at issue in said cause, the right of The Supreme Tribe of Ben-Hur, to make such assessments upon the members of remaining in Class A, as would provide for death losses in said Class A."

Complainant further avers upon information and belief that in said original suit it was conclusively and finally determined and adjudged that the entire plan of reorganization adopted by The Supreme Tribe of Ben-Hur was valid and effective upon all members of said Supreme Tribe of Ben-Hur, including the membership afterwards known as Class A, and including the defendants to this ancillary bill, who were members of Class A, and including also the beneficiaries of certain deceased members of said Class A who were living and were members of the society at the time of the creation of Class B. (Tr., p. 7.)

That it was also conclusively adjudged and determined that all action taken by the Supreme Tribe of Ben-Hur in connection with said plan of reorganization had been validly and lawfully taken, that all expenditures had been lawfully made and that The Supreme Tribe of Ben-Hur and its officers had acted in good faith, for the benefit of the entire membership of the order, and that they have been guilty of no diversion or unlawful misapplication of any of the funds of said society. (Tr., pp. 7 and 8.)

That said cause of *Balme et al. v. The Supreme Tribe of Ben-Hur et al.* "was an actual adversary proceeding; that it was instituted and prosecuted in good faith and with vigor; that the decree in said cause was entered after actual adverse litigation, and not by consent or connivance." (Tr., p. 8.)

The ancillary bill then alleges with particularity the commencement in state courts in Indiana by the defendants to said ancillary bill of suits or benefit certificates by the beneficiaries of deceased members of Class A, and by members of Class A to recover damages; that in all of said suits plaintiffs therein are seeking to relitigate questions conclusively adjudged against them as members of Class A of said Supreme Tribe of Ben-Hur in said main action; that they have no right to seek a redetermination of said questions, and that to permit them to do so is to destroy and nullify the decree rendered by the U. S. District Court for the District of Indiana. That in said several suits commenced in the state courts plaintiffs therein challenge the right of the defendant society to create Class B and the plan of reorganization and the action of the defendant society and its officers pursuant to such legislation, and that the questions of fact and law involved in said several causes in the state courts are the same identical questions, and none other, which were conclusively adjudged and determined against plaintiff therein (defendants to ancillary bill) in said main case. (Tr., pp. 8-11.)

That unless said several defendants to the ancillary bill are enjoined, they will prosecute said several causes of action against The Supreme Tribe of Ben-Hur; that complainant will be compelled to employ attorneys to defend it and will be compelled to relitigate the questions which have

been conclusively determined in its favor by said U. S. District Court for the District of Indiana, all to its irreparable loss and injury; that in this manner the several defendants to said ancillary bill of complaint are seeking to annul, set aside and hold for naught the decree of said court and to compel this complainant to litigate again all of said questions; that other former members of Class A residing within and without the State of Indiana are likely to institute similar suits unless defendants are enjoined.

The bill then alleges the necessity for an interlocutory injunction, and that complainant is without an adequate remedy at law.

After praying for a writ of subpoena, the prayer concludes:

> "2. That the defendants, and each of them, their agents and attorneys be restrained and enjoined until the final hearing of this cause, from the further prosecution of said causes in the Superior Court of Marion County, Indiana, and in the Montgomery Circuit Court of Montgomery County, Indiana, and from instituting, or prosecuting in any court, any cause of action, on any benefit certificates held by them, or in which they are named as beneficiaries, or to recover damages on account thereof, and from attempting to relitigate the questions adjudged and determined against them in the cause of *Balme et al. vs. The Supreme Tribe of Ben-Hur et al.*
>
> "3. That upon the final hearing of this cause, the said injunction be made permanent; and for such further and other relief in the premises, as may be required by equity and good conscience."
>
> (Tr., pages 12 and 13.)

Record in Balme v. Supreme Tribe of Ben-Hur.

Exhibit A to the ancillary bill of complaint contains the following pleas and proceedings in the original case of *Balme et al. v. Supreme Tribe of Ben-Hur et al.*:

Bill of Complaint. (Tr., pp. 14-24.)

Answer to Bill of Complaint. (Tr., pp. 25-60.)

Order of Reference. (Tr., p. 61.)

Master's Report. (Tr., pp. 62-96.)

Complainants' Exceptions Before Master to Master's Report. (Tr., pp. 96-101.)

Defendants' Exceptions Before Master to Master's Report. (Tr., pp. 101-106.)

Defendants' Exceptions to Master's Report. (Tr., pp. 106-111.)

Complainants' Exceptions to Master's Report. (Tr., pp. 111-117.)

Decree. (Tr., p. 117.)

Complaints Filed by Defendants to Ancillary Bill of Complaint.

The complaints filed by defendants to the ancillary bill of complaint are set out in the transcript as follows:

Aurelia J. Cauble v. Supreme Tribe of Ben-Hur. (Tr., pp. 120-122.)

Martha May Brown and Helen B. Burroughs v. Supreme Tribe of Ben-Hur et al. (Tr., pp. 125-132.)

O'Neal Watson et al. v. Supreme Tribe of Ben-Hur et al. (Tr., pp. 133-147.)

Motion to Dismiss Ancillary Bill.

All of the defendants to the ancillary bill of complaint, except Aurelia J. Cauble, joined in a motion to dismiss on numerous grounds, which may be thus summarized:

1. That none of the defendants to the ancillary bill were parties to the original bill, and that all of the defendants are residents of the same state as complainant, and therefore no jurisdiction exists.

2. That the Federal Court does not have jurisdiction to enjoin proceedings in the state courts, as is requested by the bill, for the reason that said proceedings are not attempting to deny the judgment and decree of the Federal Court on the original bill, the full faith and credit to which it is entitled.

3. That if these defendants were parties to the original bill of complaint, the court did not have jurisdiction because they and The Supreme Tribe of Ben-Hur are citizens of the same state.

4. That the bill is insufficient in equity because (a) complainant has an adequate remedy at law; (b) there is no multiplicity of suits, because part of the actions which the ancillary bill seeks to enjoin are to recover on benefit certificates and part are brought by members of Class A (to recover damages); that each action is separate and distinct and founded on a wholly different state of facts; that there is no similarity of issues, proof or parties; (c) that defendants were none of them parties to the original bill and are not bound by the decree; (d) that a decree and judgment of a Federal court is not and can not be an absolute bar to proceedings in a state court; that the causes of action of the several defendants to the ancillary bill did not accrue until after the decree in the original case was rendered.

5. "The decree rendered can not by an ancillary proceeding be extended to these defendants, for the reason that

they were not parties or privies to the original cause, and for the further reason that if they had been parties to the original cause, the Federal Court would not have jurisdiction of said action on the grounds of diversity of citizenship.

6. "The decree and judgment of the Federal Court in this cause is not a bar to these defendants for the reason that the Federal Court had no jurisdiction in said action to determine the equities of any parties complainant who were citizens of the State of Indiana, because in that case there would have been no diversity of citizenship as alleged in the original bill, for all of these defendants are residents of Indiana."

7. Under Equity Rule 38, the decree of the Federal Court in the original proceedings was without prejudice to the defendants named in the ancillary bill of complaint.

8. "The decree rendered in the original proceedings herein can not by ancillary proceedings be extended so as to operate in bar against citizens of Indiana who were not and could not have been complainants in the original bill in the case of *Balme et al.*"

(Tr., pp. 150-154.)

A separate motion to dismiss the bill of complaint, based on substantially the same grounds, was filed by the defendant, Aurelia J. Cauble. (Tr., p. 154.)

Dismissal of Bill Was Solely for Lack of Jurisdiction.

The decree of dismissal was not merely upon defendants' motion to dismiss, but also on the motion of the court, and it contains the following provision:

"Said dismissal being made solely on the ground of want of jurisdiction of the court to entertain said ancillary bill of complaint." (Tr., page 159.)

Specification of Errors Relied Upon.

The court erred:

First. In decreeing that said ancillary bill of complaint should be dismissed because said District Court of the United States did not have jurisdiction to entertain said ancillary bill of complaint.

Second. In not retaining jurisdiction of said ancillary bill of complaint and proceeding to a decree on the merits.

Third. In not decreeing that the final decree rendered in the United States District Court for the District of Indiana on April 16, 1913, in the main case, wherein George Balme, a citizen of Kentucky, and five hundred twenty-three (523) other complainants, residing in fifteen (15) different states of the Union outside of the State of Indiana, and one complainant residing in the Dominion of Canada, filed their bill of complaint in the United States District Court for the District of Indiana against the Supreme Tribe of Ben-Hur, a fraternal beneficiary society, organized under the laws of the State of Indiana, with its principal office at Crawfordsville, in said state and district, and its officers all citizens and residents of the State of Indiana, to enjoin what was claimed to be an unlawful use of trust funds of said defendant, The Supreme Tribe of Ben-Hur, in which all the complainants and other members of Class A of said Supreme Tribe of Ben-Hur had a common but indivisible interest, and attacking a plan of reorganization adopted by the supreme legislative body of The Supreme Tribe of Ben-Hur to prevent threatened insolvency and disruption of

said society, which suit was a class suit brought and prosecuted for the benefit of all members of Class A of said society, of which there were more than seventy thousand members at the time the suit was commenced, and in which suit an answer was filed by the defendants setting up a full answer to the facts averred in the bill of complaint, and in which there was a long hearing before the master; the master filed a written report, and in this report it was found that the suit was strictly a class suit presenting questions of common interest to all members of said Class A and affecting their joint interest in funds and in the internal management of the society, written exceptions were filed thereto both by complainants and defendants and a final decree was entered dismissing complainant's bill of complaint for want of equity, which said decree has never been appealed from, vacated or modified, but is still in full force and effect, was res adjudicata as to suits commenced after said final decree by residents of the State of Indiana, all of whom were members of said Class A of said Supreme Tribe of Ben-Hur or beneficiaries of persons who were members of said Class A at the time of the commencement, prosecution and final decree in said main case.

Fourth. In not decreeing and deciding that the final decree in the main case was binding on all members of Class A of the Supreme Tribe of Ben-Hur and the beneficiaries of deceased members, whether residing inside the State of Indiana or outside thereof.

Fifth. In not decreeing that the final decree in the main case was binding and conclusive on all Class A members of The Supreme Tribe of Ben-Hur at the time said action was commenced and maintained and at the time of

said final decree therein, including the beneficiaries of deceased members, without reference to their residence.

Sixth. In not decreeing that the final decree of the United States District Court for the District of Indiana in the main case of *Balme et al. v. The Supreme Tribe of Ben-Hur* was valid and binding on all Class A members of the Supreme Tribe of Ben-Hur and in decreeing that the Indiana members of said Class A could relitigate the questions finally adjudged against them in said main case.

Seventh. In not retaining jurisdiction of complainant's ancillary bill and deciding the same on its merits.

Eighth. In refusing to enjoin defendants to the ancillary bill of complaint from relitigating in the state court the questions decided adversely to them as members of Class A of The Supreme Tribe of Ben-Hur in the decree in the main case.

BRIEF OF ARGUMENT.

Points and Authorities.

1. Jurisdiction in the original suit of *Balme et al. v. Supreme Tribe of Ben-Hur et al.* depended solely on diversity of citizenship.

2. Complainant and defendants to the ancillary bill are all residents of Indiana, and jurisdiction is claimed because of its ancillary character, and because the decree in the main case bound all members of Class A by representation, whether named as parties or not, and whether residents or non-residents of Indiana.

3. The original cause was a true class suit brought by more than five hundred members of Class A of The Supreme Tribe of Ben-Hur on behalf of and for the benefit of all members of Class A, of which there were more than seventy thousand, to protect *an indivisible interest* which it was claimed they all had *in common* in the funds of the society. The cause was brought and tried in good faith, and a decree resulted, after actual litigation, dismissing the bill for want of equity. It is this common interest which constitutes the bond of union essential to the maintenance of such a class suit, and when it exists, the decree binds the entire class by representation, especially "Where the subject matter of the suit is common to all."

Hartford Life Ins. Co. v. Ibs., 237 U. S. 662, 672.
Royal Arcanum v. Green, 237 U. S. 531.
Foster's Federal Practice, Vol. 1 (5th Ed.), Section 114.

4. Where a suit is brought in a state court against a fraternal beneficiary association by some of its members, the decree binds all whether personally made parties or not. Such a decree made in a class suit which involved the status of the fund and the right of the members therein is res adjudicata in a second suit or a benefit certificate, even though the two causes of action are different, because the "right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified."

Hartford Life Ins. Co. v. Ibs, 237 U. S. 662, 673.
Southern Pacific Co. v. United States, 168 U. S. 1, 48, 49.
Forsyth v. Hammond, 166 U. S. 506, 518.

5. In assuming jurisdiction of a suit brought by members of a class claiming to represent the class in respect to an indivisible fund of a fraternal society or its internal management and prudential affairs, common to all its members, the court of necessity decides that the parties bringing the suit are representatives of the entire class, and that the suit is properly commenced as a class suit.

Hartford Life Ins Co. v. Ibs, supra.

6. Anything that can be done in a court of equity in a state court by citizens of the state suing therein can likewise be accomplished by citizens of other states of like rights suing in the Federal Court.

Williams v. Crabb, 117 Fed. (C. C. A., 7th Cir.) 193, 198, and cases cited.
Boom Co. v. Patterson, 98 U. S. 403, 407.
Payne v. Hook, 7 Wallace 425.

7. If Balme and his associates, who brought the original action in the Federal Court, had instead commenced the cause in the state court, all of the defendants to the ancillary bill who were residents of Indiana would have been bound by the decree by representation without having been made parties.

Hartford Life Ins. Co. v. Ibs, supra.

8. Section 273, Burns' Revised Statutes of Indiana 1914, provides that when a complete determination of a controversy can not be had without the presence of other parties, the court may cause them to be joined as proper parties, but it has been frequently held by the Supreme Court of Indiana that a person who has an interest in the subject matter of the suit has a right to intervene in the cause, and the settled practice in Indiana is that such persons should come in as intervening petitioners and not as coplaintiffs.

Cambria Iron Co. v. Union Trust Co., 154 Ind. 291. 296.

Barner v. Bayless, 134 Ind. 600.

Larue v. American, etc., Engine Co., 176 Ind. 609.

Upon becoming an intervenor, such person has the right to present his theory of his case to the court, but under settled equitable principles he does not become a co-plaintiff, nor does he have the right in the absence of fraud on the part of the original plaintiffs, or their refusal to prosecute the suit, to control the litigation on the original complaint, but only to control the issues joined on the intervening petition.

10. The situation is thus identical in both the state and Federal courts, because it is well settled that after

jurisdiction had attached in the Federal Court, residents of Indiana could have intervened and had their rights passed upon *without ousting the jurisdiction* of the Federal Court.

Belmont Nail Co. v. Columbia Iron & Steel Co., 46 Fed. 336.

Stewart v. Dunham, 115 U. S. 61.

Fraser v. Cole, (C. C. A., 7th Cir.) 214 Fed. 556, 561.

Payne v. Hook, 7 Wallace 425, 432.

Cyc., Vol. 11, p. 867, note 99 and p. 870.

15 C. J. 1411.

11. In a suit by creditors in the nature of a creditor's bill to subject the property of the common debtor to the payment of their debts, all creditors who make seasonable and appropriate application will be admitted.

Doherty et al. v. Holliday et al., 137 Ind. 282.

Kimball v. Whitney, 15 Ind. 280.

Butler v. Jaffray, 12 Ind. 504.

Newgass v. Atlantic R. R. Co., 72 Fed. 712.

Richmond v. Irons, 121 U. S. 27.

12. A Federal court can enjoin the relitigation in a state court of issues decided by it, and in such cases diversity of citizenship is not essential. The bill is ancillary in character.

Looney v. Eastern Texas R. R. Co., 247 U. S. 214, 221.

Riverdale Cotton Mills Co. v. Alabama, etc., Co., 111 Fed. 431, 198 U. S. 188.

Prout v. Starr, 110 Fed. 3, 188 U. S. 537.

Mercantile Trust Co. v. Roanoke, etc., Co., 109 Fed. 3.

Pell v. McCabe, 256 Fed. 512.

St. Louis, etc., Co. v. San Francisco, etc., 253 Fed. 123, 129.

13. If the Indiana members of The Supreme Tribe of Ben-Hur have the right to relitigate the questions determined in the Balme case, then the state courts have the right to reach exactly the opposite conclusion to that which was reached in the Balme case and may hold that the entire plan of reorganization of the society is wrongful, illegal and may be enjoined. The net result of this situation would be that all members outside of Indiana are conclusively bound by a decree which the society must carry out as to them, and the members in Indiana and the society would be bound by an entirely different and conflicting decree. Mutuality would thus be destroyed and the society could not obey the conflicting decrees and maintain that equality of right and duty which is the very foundation of the society's existence.

14. R. S., Section 720, does not prevent a Federal court from granting an injunction on a supplementary bill ancillary to a prior suit to restrain the prosecution of actions in a state court which would interfere with a decree in the Federal Court.

Looney v. Eastern Texas R. R. Co., 247 U. S. 214, 221.

St. Louis, etc., Co. v. McKnight, 220 Fed. 876, 244 U. S. 368.

Pell v. McCabe, 256 Fed. (C. C. A., 2nd Cir.) 512, 515, and numerous cases cited.

Krippendorf v. Hyde, 110 U. S. 276.

ARGUMENT.

The narrow question presented for consideration may be thus stated:

Is a decree entered in a true class suit brought in a Federal court by non-residents against a fraternal society in the state of its residence binding by representation on the members of such society residing within the state of the defendant's residence, although they were not actually parties to such litigation?

The facts averred in the original complaint in the Balme case, and found by the master in his report, make a true class suit. There were about seventy thousand members constituting Class A when the original suit was commenced, who were scattered throughout about thirty-two states of the Union. The questions involved were of common interest to all Class A members, who, as holders of certificates, were deeply interested in the proper management of the affairs of the society, and its very existence was involved in the controversy. The plaintiffs, some five hundred and more members of Class A, residing in fifteen states of the Union, brought the suit in behalf of themselves and all other members of Class A as a class suit. The master in his report finds:

> "That at the time the bill of complaint was filed there were more than seventy thousand members in said Class A; that on November 1, 1913, there were over forty thousand members in Class A; that it is and at all times since the filing of said bill of complaint has been impracticable to join all of said Class A members as parties hereto; that the questions

involved herein are of common and general interest to each and every member of said Class A."

The Balme case was a true class suit; the complainants therein brought the suit in behalf of all Class A members, and they represented the entire class, not any particular part of the class, but the class as a whole; the relief they were entitled to, if any, was a relief which was common to the entire class, and as a class, for if the relief demanded or the relief granted had been peculiar to any individual Class A member it would have defeated the purpose and object of the suit. In a class suit one or more may sue for all having a common interest, and it is the common interest which constitutes the bond of union essential to give the right to prosecute the suit; the suit, when thus prosecuted, is for the benefit of the whole.

> "When the question is one of a common and general interest, and one or more sue or defend for the benefit of the whole; 'and when the parties form a voluntary association for public or private purposes, and those who sue or defend may fairly be presumed to represent the rights and interests of the whole.' But there seems to be no reason for treating the two classes separately. They are called 'class suits', 'Creditors' suits', or 'stockholders' suits', as the case may be.
>
> " 'When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole.' When one or more thus file a bill on behalf of themselves and others similarly interested, they should state in the title of their bill that they so sue, and show that the others are numerous or unknown. Any others of the class have the right to join with them in the suit at any time before its settlement or termination upon payment of their

> share of the costs, and counsel fees which have been then paid or incurred, provided they do not seek to act in hostility to the original complainants, in which case the court may in its discretion allow them to intervene. If their joinder as plaintiffs would oust the court of jurisdiction, they may be brought in as defendants."
>
> Sec. 114, Foster's Fed. Practice, Vol. 1, 5th Ed.

In *Hartford Life Insurance Company v. Ibs*, 237 U. S. 662, at page 672, Mr. Justice Lamar uses the following language in defining class suits:

> "For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest *to represent the entire body*, and the decree binds *all of them* the same as if all were before the court. The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject-matter of the suit is common to all, there can be very little danger but that the interest of all will be properly protected and maintained."

At the time of the commencement of the suit of Balme et al. in the United States District Court for the District of Indiana, April 16, 1913, The Supreme Tribe of Benjamin had been admitted to transact and was transacting its business in thirty-two states of the Union and the District of Columbia. At that time the society had about eighty-five thousand beneficial members outside of the State of Indiana, residing in these states outside of the State of Indiana and in the District of Columbia, who were interested in its funds and in the management of its affairs and who were interested in the questions involved in the case and therein decided. These questions concerned the distribution of its funds and the management of its prudential affairs and

were of general and common interest to all of its members.

Its members then consisted of two classes: Class A, who comprised all the beneficial members of the society on the first day of July, 1908; and Class B, which included all members admitted subsequent to said date and all the members of Class A who after that date voluntarily transferred to said Class B.

It must be conceded that these beneficial members of Class A, residing in the states of the Union outside of the State of Indiana, and in the District of Columbia, are bound and concluded by the judgment and decree rendered in this case; that these beneficial members residing outside of the State of Indiana are bound by this judgment and decree upon the ground that as the suit was a class suit, the beneficial members prosecuting the suit in behalf of the class, represented all of these non-resident beneficial members, under the doctrine of representation in a class suit; that these non-resident members outside of Indiana were fully represented by the members who were actually plaintiffs and prosecuting the action in behalf of the entire class.

That it is a class suit as to all members but those residing in the State of Indiana seems to us certain, and the fact that the Indiana members could not have been joined as either plaintiffs or defendants is urged as a sufficient reason to show that this was not, and is not, a class suit, for, if it be admitted that it is a class suit, then we contend that the United States District Court for the District of Indiana had jurisdiction of this cause when it was filed, and can retain such jurisdiction up until it entered and rendered final judgment, and the fact that Indiana members of Class A did not appear by intervention or otherwise, can not now

be held to defeat a jurisdiction which was clearly established at the time of the filing of the suit and the entry of the judgment.

The members of Class A residing in Indiana are, nevertheless, an integral part of the class, and the non-resident plaintiffs represented them as fully and to all intents and purposes as if they were outside of the state, and, for instance, in a state of which no citizen was included among the named plaintiffs, that is, that the citizens of the District of Columbia, no one of whom is included among the plaintiffs or defendants, are bound to the same extent as the citizens of Indiana, for the reason that they are all parts of the whole Class A.

As stated in the authorities referred to, a creditors' suit or a stockholders' suit is strictly analogous to a class suit. In a creditors' suit, where there are creditors in the state in which the suit is brought were not made parties, who would, by becoming parties, as effectually destroy the jurisdiction of the court as the Indiana members in this case would have destroyed it, the way suggested in preventing that result is that the jurisdiction having fully attached when the suit was begun, the resident creditors could thereafter be admitted either as plaintiffs or defendants to the litigation without injuriously affecting the jurisdiction of the court. So here, resident members of The Supreme Tribe of Ben-Hur could have been admitted as intervenors after the suit was commenced, without ousting the jurisdiction of the court, although that jurisdiction was based wholly on diverse citizenship.

The fact that the parties are interested in a question of common interest is sufficient to authorize such plaintiffs to

join in an action for relief, even though the plaintiffs' rights and interests are separate and distinct.

Where an illegal tax has been attempted to be assessed or invalid assessments have been made against the property of separate and distinct property owners, and the only question they have in common is the question as to the validity of the tax and assessment, they have the right to join in one common suit for the purpose of obtaining relief from such invalid assessment or tax.

Quick v. Templin, 42 Ind. App. 151, 154.
Heagy v. Black et al., 90 Ind. 534, 540.
Jones, Treasurer, et al. v. Rushville National Bank et al., 138 Ind. 87, 92.

The same doctrine has been applied in a case where the plaintiffs held separate and different policies of insurance, but the object of the suit was to enforce a common interest. It was held that they had the right to join as plaintiffs in bringing and prosecuting the action, which was to prevent the company from making an assessment upon its members, including the plaintiffs.

Carmen et al. v. Cornell et al., 148 Ind. 83, 89.

Likewise, where the owners of separate, distinct parcels of real estate are threatened with a common nuisance, which affects all of them alike, they have a right to join in an action to abate this nuisance and common dangers, and the common interest in the relief sought authorizes them to join in the action.

First National Bank of Mount Vernon v. Sarlls et al., 129 Ind. 201.
Tate v. Ohio, etc., R. R. Co., 10 Ind. 174.

Town of Sullivan v. Phillips, 110 Ind. 320.
Thornton on Indiana Practice 24, Notes 9, 10, 11, 12, 14, 15.

The Federal Court will not require the joinder of one who is a proper but not an indispensable party when such joinder would defeat its jurisdiction.

Cleveland Telephone Co. v. Stone, 105 Fed. 794.
Annot. 59 L. R. A. 425.
Noble v. Gadsden Land, etc., Co., 31 Southern 856, 133 Ala. 250.
Williams v. Crabb, 117 Fed. 193.

Who is an indispensably necessary party as distinguished from a proper party? One who has an interest separable in its nature in the subject of the action which may be conveniently settled therein.

Kelly v. Boettcher, 85 Fed. 55, 71, 81.
Tift v. Southern R. R. Co., 159 Fed. 555.
Jennings v. United States, 264 Fed. 399.

It would seem that such interest must be in the subject matter of the action as property or a fund and not in the common question and relief sought.

Authorities supra.

A non-resident has the right to base an action on the equity side of the Federal Court upon any state of facts which would authorize a resident to institute a like suit in the courts of his own state. If the contention of appellees in this cause is sustained it means that non-residents of Indiana, while they might maintain a class suit in the Federal Court which would adjudicate the rights of all members of the class except those residing in In-

diana, could not obtain a decree formally fixing and establishing the rights of all the members of the class, but would be remitted to the state court if they desired to maintain a complete adjudication binding upon all the members of the class. The net result of this situation is to deprive the Federal Court of jurisdiction equal with that of the state court although the parties before it are such as to confer upon it jurisdiction, and although every member of the class residing within the state can be heard if he desires, on a petition to intervene, without ousting the court's jurisdiction.

If the objection to the case of a creditors' bill or of a stockholders' suit can be met and obviated in the manner suggested, that is, if after the original jurisdiction has attached, the resident creditors or stockholder may be admitted either by petition as an intervenor, or as a defendant, or otherwise, then surely the objection made in the present case could be obviated and all real and substantial objection put at rest by admitting resident members of Class A upon their own petition or by some supplemental proceeding. In this case it is impossible to conceive how the residents of Indiana can have an interest that is not in common with all members of Class A as alleged in the bill and found by the Master, and it is only by the statement that they can have such interest that the matter becomes of any serious consequences or entitled to any consideration. If a part of a class may maintain a suit for the whole class, then the remaining members of the class are not indispensable parties, and, we insist, that in such case jurisdiction is not ousted by parties who are not indispensably necessary being admitted subsequent to the

commencement of the action, and in fact, that is frequently resorted to in practice.

Suppose that Balme and the five hundred other non-residents of the fifteen different states had brought an action in the Montgomery Circuit Court in which no citizen of Indiana had been joined as plaintiff, and in which no citizen of Indiana actually intervened, then within the rule announced in *Hartford Life Insurance Company v. Ibs*, 237 U. S. 662, and in *Royal Arcanum v. Green*, 237 U. S. 531, the judgment would have been an adjudication against all the members of the society whether residing in Indiana or outside of Indiana. This adjudication would have resulted, not because the members residing in Indiana were represented individually by the named plaintiffs, but because the named plaintiffs *"represented the entire body."* It is true that in such case the Indiana members could have intervened and been heard, but they would have been bound by representation in their absence.

To deny to the decree in the main case here the same effect, is to hold that a judgment of the Federal Court of concurrent jurisdiction is not available by way of res adjudicata to the same extent and on the same parties as a judgment of the state court.

The law is firmly settled that anything that can be done in the court of equity in the state court by citizens of the state suing therein, can likewise be accomplished by citizens of other states of like rights suing in the Federal Court.

Boom Co. v. Patterson, 98 U. S. 403, 407.
Williams v. Crabb, 117 Fed. 193, 198 and cases cited.

In the case suggested in the state court a citizen of Indiana would be bound by the judgment without being actually present in court, or a party to the record, but he would have had an opportunity to be heard if he asserted such right by a petition to intervene.

His situation in the state court is therefore identical with his situation in the Federal Court, because in the Federal Court after the filing of the bill he could intervene without ousting the jurisdiction of the court.

Belmont Nail Co. v. Columbia Iron & Steel Co., 46 Fed. 336.

Stewart v. Dunham, et al, 115 U. S. 61.

Fraser v. Cole, 214 Fed. 556, 561.

Payne v. Hook, 7 Wallace 425, 432.

In the leading case of *Stewart v. Dunham, supra*, appellees filed their bill in the chancery court in Mississippi against appellants. The cause was thereafter removed into the Circuit Court of the United States and the bill was then amended making other creditors co-complainants, which resulted in citizens of the same state being both complainants and defendants.

This court in holding that jurisdiction of the Circuit Court of the United States was not thereby ousted, said:

> "The appellants assign as error that the court proceeded to decree, after admitting Katz and Barnett and John I. Adams & Co. as co-complainants, alleging, that, as the case then stood, it was without jurisdiction, as the controversy did not appear to be wholly between citizens of different States. This, of course, could have furnished no objection to the removal of the cause from the state court, because at the time these parties had not been admitted to the cause; and their introduction afterwards as co-

complainants did not oust the jurisdiction of the court, already lawfully acquired, as between the original parties. The right of the court to proceed to decree between the appellants and the new parties did not depend upon difference of citizenship; because, the bill having been filed by the original complainants on behalf of themselves and all other creditors choosing to come in and share the expenses of the litigation, the court, in exercising jurisdiction between the parties, could incidentally decree in favor of all other creditors coming in under the bill. *Such a proceeding would be ancillary to the jurisdiction acquired between the original parties, and it would be merely a matter of form whether the new parties should come in as co-complainants, or before a master, under a decree ordering a reference to prove the claims of all persons entitled to the benefit of the decree. If the latter course had been adopted, no question of jurisdiction could have arisen. The adoption of the alternative is, in substance, the same thing.*"

Even in a class suit in the state court, residents of Indiana could not have forced their way in as co-plaintiffs against the objection of the parties bringing the suit, and their sole right would have been by intervention just as in the Federal Court.

The following language of this court from *Hartford Life Insurance Company v. Ibs, supra*, shows that it is the policy of the law to settle all legal propositions involved in one class suit, and to make the decision of such legal questions binding on all members of the order:

"The Fund was single, but having been made up of contributions from thousands of members their interest was common. It would have been destructive of their mutual rights in the plan of Mutual Insurance to use the Mortuary Fund in one way for claims of members residing in one state and to use it in

another way as to claims of members residing in a different state. To make advances replenished by assessments against those living in Connecticut—and to make advances without the right to replenish against those living in Wisconsin—would have destroyed the very equality the assessment plan was intended to secure. Manifestly, the question as to the ownership and proper administration of the fund could *not be left at large for collateral decision in every suit on certificates held by those who had failed to pay the assessment.* For—whether the members of the 'Safety Fund Department' are regarded as occupying a position analogous to that of shareholders; or are treated as beneficiaries of trust property in the hands of the Company, as Trustee, in the State of Connecticut—the courts of that state had jurisdiction of all questions relating to the internal management of the corporation."

It is not unfair, as we see it, in determining whether the decree in the main case is res adjudicata as to all members of the society, to consider the result which would follow from a contrary holding.

If the Indiana members of the society have the right to relitigate the questions determined in the Balme case, then the courts of the state have the right to reach exactly the opposite conclusion that was reached in the Balme case, and may hold, if they see fit, that no common expense fund can be maintained, and even further may hold that the entire plan for the creation of Class B is wrongful, illegal and must be enjoined. The net result of this situation would be that all members outside of Indiana are conclusively bound by a decree which the society must carry out as to them, and the members in Indiana would be bound by an opposite decree entered in the state court. This would leave the society in a situation not only where mutuality

would be destroyed, but where it would be absolutely impossible for it to obey the two conflicting decrees and maintain that equality of right and duty which is the very foundation of the society's existence.

Equity Rule 38 adopted by the Supreme Court of the United States in 1912 reads as follows:

> "When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole."

Prior to 1912 this rule was qualified by the following clause, which was omitted from the revision:

> "but in such cases the decree shall be without prejudice to the rights and claims of the absent parties."
>
> See *in re Dennett*, 221 Fed (CCA 9th Circuit), 350, 355.
>
> *Coann v. Atlantic Cotton Factory Co.*, 14 Fed. 4, 8.

The omission of this qualifying clause certainly was intentional and makes the judgment in a class case more effective than it had been under the rule prior to its amendment, and we further suggest that the rule itself emphasizes the fact that this suit is brought for the class as a whole, and shows that the individual member is no longer an indispensable party, and that his rights are embraced in the class, and outside of the class he has no rights that can be made the subject of an action at law or in equity, save in exceptional instances not necessary to be here considered.

In interpreting this rule it must be further borne in mind that it was adopted with reference to actions in the

Federal Court where class suits have been frequently brought with members of the class residing in the state in which the suit was brought.

Assuming for the sake of argument that the Indiana members of Class A are not indispensable parties plaintiff in the original Balme suit for the reason that a sufficient number of Class A members are parties plaintiff to show the court that Class A will be properly protected in any decree that may be entered, the court would not admit a resident member of Class A upon a petition to be made party plaintiff, against the opposition of the other plaintiffs, if by so doing the jurisdiction of the court would be defeated. Neither would the court allow them to be made parties plaintiff if their purpose was to annoy and harass the plaintiff in the prosecution of a suit for the common benefit of all, but would require them to become parties defendant or intervenors. Therefore, if they have any interest in the class suit, they can assert it by intervention, or otherwise and it will be properly protected in the decree rendered.

BENJAMIN CRANE,
CHARLES M. MCCABE,
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Attorneys for Appellant.

IN THE

Supreme Court of The United States

OCTOBER TERM, 1919.

No. 790. 274

THE SUPREME TRIBE OF BEN-HUR,
Appellant,

v.

AURELIA CAUBLE ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

BRIEF AND ARGUMENT FOR APPELLEES.

WILLIAM C. BACHELDER,
Attorney for Appellees.

E. A. HARDIN PRINT, INDIANAPOLIS

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

BRIEF AND ARGUMENT FOR APPELLEES.

STATEMENT OF THE CASE.

ADDITIONAL TO STATEMENT IN APPELLANT'S BRIEF.

Appellees filed their separate suits in the state courts of Indiana, alleging, among other things, that in the year 1916 appellant fraudulently and wrongfully cancelled appellees' policies and refused to accept any further payments of dues or assessments and has refused to pay any losses

on said policies, and has entirely discontinued and abandoned Class A of said appellant association.

Transcript, pages 120-122.
Transcript, pages 125-132.
Transcript, pages 133-147.

The master's report in the original bill found, among other things, that appellant was continuing Class A and intended to continue it in the future and administer its funds for the best interest of the remaining policy holders in the class.

Transcript, pages 86 and 93.

BRIEF AND ARGUMENT.

POINTS AND AUTHORITIES.

1. The injunction bill is not considered an original bill between the same parties as at law, but if different parties are introduced and different interests involved it is to that extent an original bill and the jurisdiction of the court must depend upon the citizenship of the parties.

Dunne v. Clarke, 33 U. S. 3.
Williams v. Byrne, 29 Fed. Cas. 17718.

2. The court must dismiss the case at once if it appears at any time during the progress of the case that it is without jurisdiction.

Turner v. Farmers Loan & Trust Co., 106 U. S. 555.
King Iron Bridge Co. v. Ottoe County, 120 U. S. 226.
1 U. S. Corp. Stats. 1916, Par. 1019, P. 1033.

3. If parties not before the court have rights so closely related to the issues between parties in court that a final decision can not be made between them without affecting the rights of those not before the court, the court may not dispense with such persons.

Ex Parte Equitable Trustee, 231 Fed. 571, 145 C. C. A. 457.
Shields v. Barrow, 17 How. 130, and cases cited.
Cameron v. McRoberts, 3 Wh. 571.

4. Where there is a plain and adequate remedy at law an equity suit will not lie.

Shields v. Barrow, 17 How. 130.

5. A judgment is not an absolute bar to another suit between the same parties on a different cause of action, but is an estoppel only of those questions which have been adjudicated.

Cromwell v. Sac County, 94 U. S. 351.
Southern Pacific Co. v. U. S., 168 U. S. 1.

6. An equitable defense to a civil action is now as available as a legal defense. The question now is "ought the plaintiff to recover?" and anything which shows that he ought not is available to the defendant, whether it was formerly of equitable or of legal cognizance.

Holland v. Johnson, 51 Ind. 346.
Maxwell v. Campbell, 45 Ind. 360, 363.
Ind. Stat. 1881 Sec. 347.

7. When there are two or more plaintiffs and two or more joint defendants, each of the plaintiffs must be cap-

able of suing each of the defendants in the court of the United States in order to support the jurisdiction.

Strawbridge et al. v. Curtis et al., 3 Cranch 267.

8. Prior to Equity Rule 39 the United States Court could not render judgment in a suit unless there was diversity of citizenship as to all indispensable parties.

Shields v. Barrow, 17 How. 130, and cases cited.
Cameron v. McRoberts, 2 Wh. 571.

ARGUMENT.

There was another objection raised to appellant's ancillary bill in appellees' motion to dismiss, and the Supreme court has frequently decided that it will take cognizance of other facts in the case after it has once reached this court, if it is necessary for a fair and complete determination of the controversy.

Appellees in their motion to dismiss alleged that the original decree in the Federal Court was not a bar to the litigations in the state courts for the reason that the issues were not the same. The original decree in the Federal Court found that Class A of the Tribe of Ben Hur was to be continued and the interests of the policy holders protected and increased. The actions brought in the state courts are based on the refusal of the appellant to pay the benefits on said policies, or to continue said policies in force and effect; thus raising an issue entirely untouched by the original suit. It could not have been in the knowledge or contemplation of the Federal District Court when the decree was rendered that a year or more afterward this appellant would discontinue Class A entirely. This raises an issue that undoubtedly was not adjudicated and prosecution of such an action, even between the same parties, could not be enjoined by ancillary proceedings. In such case only those issues actually decided in the original case are barred in the subsequent litigation. An injunction applying to only part of a litigation would not prevent a multiplicity of suits and as former adjudication is a good and valid defense in the Indiana courts appellant has an

adequate remedy at law, and no case is presented for a court of equity.

Holland v. Johnson, 51 Ind. 346.
Maxwell v. Campbell, 45 Ind. 360, 363.

It is inconceivable that because parties have litigated one issue they are forever barred from suing the same parties on any issue.

Appellant in his brief has laid particular stress upon the fact that appellees could have come in and intervened in the original suit and had their rights protected, but they have lost sight of the fact that the record shows none of these appellees came in, and if they did not come in of their own accord they were not bound by the decision unless they were parties plaintiff at the very beginning.

It is a fundamental principle of class suits that every member of the class is a party to the action, either by personal appearance or by representation. If that is the case then in order for the Federal Court to have jurisdiction of a class suit on the grounds of diversity of citizenship, every member of the class appearing in person or by representation, must be of a diverse citizenship from every defendant. The rule of determining jurisdiction on the grounds of diverse citizenship as laid down by this court in the case of *Strawbridge v. Curtis*, 3 Cranch 267, is as follows:

> "Where there are two or more joint plaintiffs and two or more joint defendants, each of the plaintiffs must be capable of suing each of the defendants in the Court of the United States in order to support the jurisdiction."

Measuring this case by that rule, it is plain that these appellees could not have been parties to that suit.

If George Balme, et al. could come into the Federal Court on behalf of themselves and these appellees and bind these appellees by the decree, then these appellees must have had the right to have filed a complaint in the Federal Court on behalf of themselves and George Balme, et al, and obtained the same result. Yet if these appellees had instituted that suit instead of George Balme, et al., how far would they have gone? The court would have immediately dismissed their cause for lack of jurisdiction. If appellees could not have gone into the Federal Court and asked relief against appellant, what rule of law will permit appellant to go into the same court and ask relief against appellees?

Prior to the adoption of Rule 39 in equity, the Federal Court would not have had jurisdiction of the original case of *Balme, et al. v. Supreme Tribe of Ben Hur*, but would have been forced to dismiss the same for lack of jurisdiction.

Shields v. Barrow, 17 Howard 130, and cases cited.

Equity Rule 39, however, makes an exception by permitting the court to adjudicate as between those present, without binding absent parties. Originally Rule 39 was a part of Rule 38 and only applied to class suits, but has been separated under the new rules and made to apply to "all cases."

Appellees can think of no stronger argument in this cause than that which Judge Baker delivered in his opinion in the lower court and which we hereupon quote in full:

"Baker, Circuit Judge. The original bill in this case was brought against the Supreme Tribe of Ben-Hur by George Balme and others in their own right and on behalf of other holders of Class A certificates. The court took jurisdiction on the ground of diversity of citizenship, as the defendant was an Indiana corporation, and none of the named complainants were citizens of that state. A decree in favor of the defendant resulted. Actions against the Supreme Tribe of Ben-Hur raising the same questions were then started in the state courts of Indiana by Indiana holders of Class A certificates. The Supreme Tribe of Ben-Hur thereupon presented this as an ancillary bill to restrain those Indiana citizens from prosecuting their actions in the state courts, claiming that the original bill was a class suit and the rights of all holders of Class A certificates were fully adjudicated, as in *Royal Arcanum v. Green*, 237 U. S. 531, 35 Sup. Ct. 724, 59 L. Ed. 1089, L. R. A. 1916 A, 771.

It is fundamental principle of our system of jurisprudence that no court may adjudicate the rights of parties who are not subject to its jurisdiction. Had the Indiana holders of Class A certificates been named in the original bill, the court could not have taken jurisdiction on the ground then relied on, i. e., diversity of citizenship. Was there anything in the subject-matter of this as a class suit which would give the court jurisdiction over the rights of those who could not be named parties to the bill without ousting the jurisdiction?

Before the Judiciary Act of 1789 (1 Stat. 73) created the Federal courts, the doctrine of class suits (thought not called by that name) was a well-established exception to the general rule that only rights of actual parties to the bill may be affected by the decree. Story's Eq. Pl. (10th Ed.), Paragraphs 94-116: *West v. Randall*, 2 Mason 192, Fed. Cas. No.

17, 424; *Adair v. New River Co.*, 11 Ves. 429; *Wendell v. Van Rensselaer*, 1 Johns. Ch. (N. Y.) 349; *Mare v. Malachy*, 1 Myl. & Cr. 559; *Fenn v. Craig*, 3 Y. & Coll. 216; *Barker v. Walters*, 8 Beav. 92. At that time the courts of a state in which a particular corporation was domiciled were the necessary forums of all grievances concerning the rights of any of its citizens against that corporation. To state the same thing from a different viewpoint, the rights of a citizen against a corporation of his own state could have been adjudicated only in the courts of that state. To be sure, a citizen of a different state might have brought an action against the corporation; he might even have brought a class suit against it; but he must have brought it in the courts of the home state of the corporation.

(1) The Constitution gave to the Federal courts jurisdiction over cases of law and equity involving nonfederal questions only when the parties were of diverse citizenship. Their jurisdiction over the subject-matter of class suits, then a well-established doctrine, was thereby limited to cases wherein the parties were purely interstate. Therefore adjudication of the rights of a citizen against a corporation of his own state, being only intrastate litigation, could not be had in the Federal courts.

(2) Equity Rule 38 (198 Fed. xxix, 115 C. C. A. xxix) is as follows:

'When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole.'

This rule formerly was qualified by the following clause:

'But in such cases the decree shall be without prejudice to the rights and claims of the absent parties.'

It is urged by complainant that this omission was intended to remove the interstate limitation of the jurisdiction of the Federal courts when a class suit was the subject-matter. If it was intended to extend jurisdiction in such a naive fashion, such intention could not have been thus accomplished, for the limitation of the jurisdiction of the Federal courts with respect to subject-matter being constitutional, it could not be affected by rules, either affrmatively or negatively expressed.

(3) A rule more applicable to the present case is Rule 39. This rule and Act. Feb. 28, 1839, c. 36, Par. 1, 5 Stat. 321 (Comp. St. Par. 1032), on which it is based, merely formulate a long-established practice. *Commercial Bank v. Slocomb*, 14 Pet. 60, 10 L. Ed. 354; *Shields v. Barrow*, 17 How. 130, 15 L. Ed. 158; *Thomas v. Anderson*, 223 Fed. 41, 138 C. C. A. 405 (C. C. A. 8th Cir.). The rule is as follows:

'In all cases where it shall appear to the court that persons, who might otherwise be deemed proper parties to the suit, can not be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may, in its discretion, proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.'

It can not be doubted that Indiana citizens were 'out of the jurisdiction' of the Federal court in the suit against an Indiana corporation. Nor can it be doubted that 'their joinder would oust the jurisdiction of the court.' Although that did not prevent the court from proceeding with the cause, the rights of Indiana citizens were not affected, because 'in such cases the decree shall be without prejudice to the rights of the absent parties.' In other words,

although the original bill was a class suit, the class did not include Indiana citizens.

(4) Sometimes by means of an ancillary bill or an intervening petition a Federal court hears and determines a nonfederal controversy between citizens of the same state; but that occurs only in those cases in which the Federal Court is already properly in possession of a res and the determination of the intrastate nonfederal controversy is necessary to a just administration of the res. Manifestly this bill is not of that character, for the original bill involved only the charter rights of the Ben-Hur society under the Indiana statutes.

(5) The present defendants not being parties to the original bill, this proceeding is not an ancillary bill, but is an original bill of an Indiana corporation against Indiana citizens, and this court is without jurisdiction.

The bill is therefore dismissed, on the sole ground that the court is without jurisdiction to entertain it."

WILLIAM C. BACHELDER,
Attorney for Appellees.

Respectfully submitted,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

No. 274.

THE SUPREME TRIBE OF BEN-HUR,
Appellant,

v.

AURELIA CAUBLE ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

PETITION FOR REHEARING.

WILLIAM C. BACHELDER,
Attorney for Appellees.

B. A. HARDIN PRINT, INDIANAPOLIS

INDEX.

CASES CITED.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

THE SUPREME TRIBE OF BEN-HUR,
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Appellees.

No. 274.

PETITION FOR REHEARING.

Now comes Aurelia J. Cauble, Martha M. Brown, Helen B. Burroughs, O'Neal Watson, Harry M. Vance, Robert McMains, Eliza H. Watson, Sidney Speed, William E. White, Lavander C. White, Ida M. Williams, John O. Williams, William H. Williams, John H. Rice, Theodore M. Sharp, Robert T. Davis, George Neilist, Margaret C. McMains, John W. Hurley, Henry T. Schenck, Thomas J. Houlihan, Frank S. VanDyke, George C. Cox, Armina J. Cox, Elizabeth Clemson, Margaret Speed, Thomas J. Harp, Mary E. Osburn, Edwin A. Brown, James Walter Grimes, Vona Dickerson, John C. Wingate, Anna E. Young, Wesley

W. Young, James W. Dickerson, appellees, and hereby petition the court to set aside the judgment heretofore granted in this case and to grant a rehearing, and in support of this petition say:

1. The opinion of the court is based upon the faulty premise that in this case there was the requisite diversity of citizenship to give the Federal court jurisdiction of this case. This holding is in direct contravention of the rules for determining jurisdiction as laid down in the case of *Strawbridge v. Curtiss*, 3 Cranch 267, and upheld in the following cases:

Florida Cent. & Pen. R. R. Co. v. Bell, 176 U. S. 321, p. 332.
Hooie v. Jameson, 166 U. S. 395.
Barney v. Baltimore, 6 Wall. 280.
New Orleans v. Winter, 1 Wheat 91.
Merchants, etc., Co. v. Insurance Co., 151 U. S. 368, 384.
Hamrick v. Hamrick, 153 U. S. 192.
Shields v. Barrow, 17 How. 130.
Cameron v. McRoberts, 2 Wheat 571.

In *Smith v. Lyon*, 133 U. S. 315, a later case than that of *Stewart v. Dunham*, cited by the court, it was held that the rule laid down in *Strawbridge v. Curtiss* had never been changed.

The rule in *Strawbridge v. Curtiss* is that in determining diversity of citizenship each of the plaintiffs must be capable of suing each of the defendants. In this case the plaintiffs were all of the members of Class A. These appellees are members of Class A and were residents of the

same state as the appellant, defendant in the original case. Therefore, under the rule laid down in *Strawbridge v. Curtiss*, the Federal court did not have jurisdiction of a suit between all of the members of Class A and the Supreme Tribe of Ben-Hur. It could only acquire jurisdiction of the case as between the defendant and those plaintiffs who were non-residents of the State of Indiana.

2. This case is based upon the faulty premise that Rule 38 in Equity gave the Federal court jurisdiction of all class suits. There is nothing in that rule that in any way makes the rules of jurisdiction any different in class suits than in other suits. To attain jurisdiction, the complaint must show that every member of the class is a non-resident of the State of Indiana or else there is not diversity of citizenship.

Cameron v. McRoberts, 2 Wheat 571.
Vattier v. Hinde, 7 Peters 252.

At the time this last case was decided class suits were as fully recognized and permitted as they are now.

Beatty v. Kurtz, 2 Peters 566.

3. The opinion of the court is based upon the authority of *Stewart v. Dunham*, 115 U. S. 61, when in fact *Stewart v. Dunham* is not in point for the following reasons:

A. There are three classes of parties to a bill in equity:

1. Formal parties.

2. Persons having an interest in the controversy, and who ought to be made parties, in

order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it. These parties are commonly termed necessary parties; but if their interests are separable from those of parties before the court so that the court can proceed to a decree, and do complete and final justice, without affecting other parties not before the court, the latter are not indispensable parties.

3. Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree can not be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience.

Shields v. Barrow, 17 How. 130.

This first class may be dispensed with. The second class has been decided along a different rule of law than the third class.

Cameron v. McRoberts, supra.
Osborn v. Bank of U. S., 9 Wheat 738.
Harding v. Handy, 11 Wheat 132.
Mallow v. Hinde, 12 Wheat 197.

That the case now before the court belongs to the third class can not be questioned. That the case of *Stewart v. Dunham* belongs to the second class is clearly evidenced

from the facts that in it the judgment was a separate money judgment in favor of each party and that the Supreme Court dismissed the appeal against all but the original creditor, and proceeded to decide his claim against him.

The cases cited above have held that in the absence of diversity of citizenship the court may in some instances attain jurisdiction over the second class, but never over the third class.

Shields v. Barrow, supra.

B. *Stewart v. Dunham* is not in point in this case for the further reason that it was removed from the state court and the Federal court attained jurisdiction of the cause by reason of the Removal Act of 1875, as construed in the case of *Barney v. Latham*, 103 U. S. 205, wherein it was held that under authority of that act a case in which there was a separable controversy between parties of diverse citizenship could be removed as a whole, though there were other parties in the case whose citizenship was not diverse. In other words, Dunham's claim against Stewart was a separate controversy in which the other creditors were not interested, which fact was shown by the fact that the other creditors won while Dunham lost. Therefore, under the Removal Act the Federal court could assume jurisdiction of the entire case and incidentally decide the rights of the other parties.

The Ben-Hur case was originally in the Federal court and is in no way governed by the Removal Act of 1875.

C. *Stewart v. Dunham* is not in point because Equity Rule 39 does not apply to it. Equity Rule 39 says that the decree shall be without prejudice to absent parties. In *Stewart v. Dunham* all the parties were in court voluntarily before the decree was made, while in this case these appellees were not in court at all.

4. The opinion of the court is based upon the faulty premise that the subject matter of this suit was one over which the Federal court has jurisdiction. Appellees call the court's attention to the fact that the issues in *Balme et al. v. Supreme Tribe of Ben-Hur* did not contain a Federal question, but were purely within the jurisdiction of the courts of the State of Indiana, and the only way in which the Federal court could attain jurisdiction was by reason of the fact that all the plaintiffs were residents of different states from the defendant, who was a resident of the State of Indiana.

5. The opinion of the court erroneously held that Equity Rule 39 does not apply to a subject already covered by Rule 38. Appellees insist that Rule 38 does not in any way touch upon the question of the jurisdiction of the court or the effect of its decree on absent parties. It merely states in a rule of court the already well established rule of law which permits class suits, but it did not confer jurisdiction of any class suits over which the Federal court did not already have jurisdiction. Under this rule a suit brought on behalf of a class would have to show facts giving the court jurisdiction, the same as formerly, and it would be the duty of the court to follow the rule quoted in the case

of *King Iron Bridge Co. v. Ottoe County*, 120 U. S. 226, as follows:

> "The rule, springing from the nature and limits of the judicial power of the United States, is inflexible and without exception, which requires this court, of its own motion, to deny its own jurisdiction and in the exercise of its appellate power, that of all other courts of the United States, where such jurisdiction does not affirmatively appear in the record on which, in the exercise of its power, it is called to act. On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes."

Under Rule 38 and in the absence of Rule 39, the Federal court would have been forced to dismiss the suit of *Balme et al.*, because the record did not disclose that all the members of Class A were non-residents of the State of Indiana. But it is Rule 39 which allows the court to use its discretion and retain jurisdiction and enter up a decree which shall not bind the absent parties. Those two rules are not in conflict, nor is Rule 38 an exception to the Rule 39. Rule 38 as amended was not intended to apply to such cases. On the other hand, the provision that was taken away from Rule 38 was made a separate rule, Rule 39, was broadened to affect not only class suits, but "all cases." The two rules were created simultaneously and by the same court. If Rule 39 had not been intended to include class suits, it would not have inserted the words "all cases." There is nothing about a class suit which makes it an exception to the rules which are laid down by the court and by statutes to insure constitutional right of every citizen

to "due process of law." On the contrary, it should be more carefully scrutinized than any other kind of action, because in it the property rights of persons may be adjudicated without those persons' knowledge and without giving them any opportunity to be heard in court.

6. The court in its opinion erroneously calls into question the inconvenience which may be caused by a decree which binds some of the class and does not bind others. Let us on the other hand consider the inconvenience which may be caused to those persons whom the court would bind in a case wherein they had not opportunity to be heard and protect their rights. Those who were in court had their opportunity, and if they are bound, it is no more than fair. But these appellees were not in court, had no notice, no opportunity to be heard, and could not have prosecuted this action because the court was without jurisdiction as to them. The court below must have decided that it would not be much inconvenience to the defendant because it could have dismissed the cause for want of jurisdiction, but it used its discretion as permitted in Rule 39 in Equity and proceeded to decide the case without prejudice to absent parties. Evidently the defendant did not feel very seriously inconvenienced because it did not object to the jurisdiction of the court and allege the fact that part of the plaintiffs were residents of the State of Indiana.

7. Coming finally to a consideration of this case purely from a reasonable and logical viewpoint apart from the tangled maze of decisions and rules, appellees call the court's attention to the following facts: If the appellees had instituted the original bill against the Supreme Tribe of Ben-Hur in the Federal court on behalf of themselves and all

other members of Class A, it would have immediately been dismissed for want of jurisdiction in spite of Equity Rule 38. If the appellees had instituted the suit in the state court and *Balme et al.* had joined in and then the Supreme Tribe of Ben-Hur had asked to remove the case to the Federal court, its petition would not have been granted, because the case did not contain a separable controversy in which there was diversity of citizenship. On the other hand in the case of *Stewart v. Dunham* if the other creditors had filed their case against Stewart in the state court and Dunham had afterwards joined, Stewart could have had the case removed to the Federal court, because it contained a separable controversy between him and Dunham and the entire case would have gone to the Federal court.

Thus the difference between the two cases becomes plain. It is clear to see why the court has jurisdiction in one case and not in the other.

If the appellees in this case had had actual notice of the case of *Balme et al.* and had sought to come in and have their rights protected, the Federal court would not have permitted them to appear and be heard, because as soon as they appeared the court would align them according to their interests, and instead of placing them as intervenors or third parties with a separate interest in the controversy, it would have been forced to align them as co-plaintiffs jointly and inseparably interested along with all the other plaintiffs and the case would have fallen under the rule laid down by Chief Justice John Marshall in *Strawbridge v. Curtiss*, 3 Cranch 267, and the court would have been without jurisdiction, and it is inconceivable that they should be bound by the decree when they did not have the right to

appear and be heard. The court did not have jurisdiction of the res unless it had jurisdiction of the parties, and it did not have jurisdiction of the parties unless it had jurisdiction of Class A, and it did not have jurisdiction of Class A if some of the members of Class A were citizens of the same state as the defendant; therefore, it must be decided that Class A in this suit did not include its Indiana members, or else the Federal court never had jurisdiction of the case of *Balme v. Ben-Hur* and its decree was wholly void.

That *Stewart v. Dunham* is an exception to the rule and not in line with this case is clearly shown in the following decision of this court:

> "If the right of the plaintiffs is based upon a common ground and they elect to make it a common controversy, it is a single cause of action and the rule in *Strawbridge v. Curtiss* applies. This rule has been applied to removal cases except where there is a separable controversy."
>
> *Peninsular Iron Co. v. Stone*, 121 U. S. 631.

It is submitted that the appellees are entitled to a hearing on the above points.

Respectfully submitted,

William E. Bachelder

Attorney for Appellees.

CERTIFICATE OF COUNSEL.

The undersigned, attorney for Aurelia J. Cauble, and others, appellees, in the above entitled cause, hereby certifies that the above Petition for Rehearing is made in good faith, and not for purpose of delay; and that in his opinion. said petition is well founded in law.

William L. Barnes,

Attorney for Appellees.

SUPREME COURT OF THE UNITED STATES.

No. 274.—October Term, 1920.

The Supreme Tribe of Ben-Hur, Appellant, vs. Aurelia J. Cauble et al.	Appeal from the District Court of the United States for the District of Indiana.

[March 7, 1921.]

Mr. Justice Day delivered the opinion of the Court.

This case is here upon a question of jurisdiction. Jud. Code § 238. Appellant is a fraternal benefit association organized under the laws of the State of Indiana. It filed a bill against Aurelia J. Cauble and others, citizens and residents of Indiana, to enjoin them from prosecuting in the State courts certain suits which, it is averred, would relitigate questions settled by a decree of the United States District Court for Indiana; it being the contention that all the members in Class A in the Supreme Tribe of Ben-Hur, including the appellees, were bound and concluded by the Federal decree.

The bill was filed upon the theory that it is ancillary in character, and justifies a decree to protect the rights adjudicated in the original proceeding. A motion to dismiss for want of jurisdiction was sustained. 264 Fed. 247.

The ancillary bill alleges that the questions decided in the original suit, determined:

(1) The right of the Supreme Tribe of Ben-Hur to create a new class of benefit certificate holders known as Class B. (The membership in such society up to July 1, 1908, having been in the class thereafter to be designated as Class A); (2) The right of the society to determine that all benefit certificates issued after July 1, 1908, should be Class B certificates, and that no Class A certificates should be issued after that date, and no new members taken into Class A, from that time. (3) The right of the Supreme Tribe of Ben-Hur to require members of Class B to pay different

rates for their insurance from members of Class A. (4) The right of the Supreme Tribe of Ben-Hur to require that the mortuary funds of the two classes be kept separate and distinct, and that the death losses occurring therein, should be paid out of the funds of each class respectively. (5) The right of the Supreme Tribe of Ben-Hur to authorize members of Class A to transfer, upon a written application therefor, to Class B, and to take with them into Class B their interest in the mortuary and other funds of the society, created, or arising prior to July 1, 1908, and requiring the Class B members to pay a monthly payment and rate in excess of that paid by Class A members. (6) The right of the Supreme Tribe of Ben-Hur to require members remaining in Class A, and not transferring to Class B, to pay a sufficient number of monthly payments, or assessments, to meet the death losses in Class A. (7) The right of the Supreme Tribe of Ben-Hur to use the expense fund of the society for the purpose of creating Class B, and induce Class A members to transfer to Class B, and to secure new members in Class B. (8) Whether the Supreme Tribe of Ben-Hur had used the expense fund in a manner justified by its constitution and by-laws and a general examination of expenditures which had been made by that society, out of its expense fund, and the purpose for which these expenditures had been made, and whether any of them were made in violation of the rights of Class A members. (9) The right of the Supreme Tribe of Ben-Hur to use its expense fund, including all questions as to whether payments made out of it were equitable and just, or inequitable, wrongful and unlawful; and the question of whether the maintenance of a general expense fund, and the payments of the entire expenses of the society therefrom, was fair, just and legal. (10) Whether the Supreme Tribe of Ben-Hur had wrongfully, or unlawfully, inaugurated a campaign to persuade and induce the members of the society belonging to Class A to give up their certificates in Class A, and to apply for and procure membership and certificates in Class B; or whether the action of the society, and its officers, in that connection, was rightful, just and equitable. (11) The question of whether the rates in Class A, in effect prior to July 1, 1908, were adequate, or inadequate, or whether they were sufficient to provide for the current death losses in Class A, and the expenses of the society; or whether it was necessary, in order to prevent

the insolvency of The Supreme Tribe of Ben-Hur, to create a new class, and induce the members of the old class, in so far as it was possible to induce them, to transfer to the new class, and the right of the society to take all action necessary for this purpose.

Other details of the reorganization are set forth, and it is averred that in the original suit it was finally determined and adjudged that the reorganization adopted by the Supreme Tribe of Ben-Hur was valid and binding upon all the members of the society, including the members known as Class A.

The ancillary bill alleges that the commencement of the suit in the state courts of Indiana will have the effect to relitigate questions conclusively adjudicated against the defendants as members of Class A in the action in the United States District Court; that to permit them to do so would destroy the effect of the decree rendered in that suit; that in the several suits commenced in the state courts plaintiffs therein challenged the rights of the society to create Class B; and that the plan of reorganization of the society to create Class B, and the questions of fact and law involved in the causes in the state court are the same questions and none other than those conclusively adjudged and determined in the main suit.

The district judge dismissed the suit for want of jurisdiction upon the following certificate:

"I hereby certify that I dismissed the ancillary bill of complaint in the above cause of the Supreme Tribe of Ben Hur *v.* Aurelia A. Cauble et al., solely because of the lack of jurisdiction of the United States District Court for the District of Indiana to entertain said ancillary bill of complaint.

"I dismissed said ancillary bill of complaint upon a motion filed by the defendants thereto and also upon my own motion.

"The jurisdictional question arose as follows:

"On April 16, 1913, George Balme, a citizen of the State of Kentucky, and five hundred and twenty-three other complainants residing in fifteen different states of the Union outside of the State of Indiana, and one complainant residing in the Dominion of Canada, filed their bill of complaint in the United States District Court for the District of Indiana against the Supreme Tribe of Ben-Hur, a fraternal beneficiary society organized under laws of the State of Indiana with its principal office at Crawfordsville in said state and district aforesaid, and its officers, all citizens and residents of the State of Indiana, to enjoin what was claimed to be an unlawful use of trust funds of said defendant, Supreme

Tribe of Ben-Hur in which all the complainants and other members of Class A of said Supreme Tribe of Ben-Hur had a common but indivisible interest, and attacking a plan of reorganization adopted by the Supreme legislative body of the Supreme Tribe of Ben-Hur to prevent threatened insolvency and disruption of said society; the suit was a class suit brought and prosecuted for the benefit of all members of Class A of said society of whom there were more than seventy thousand at the time of the commencement of said suit, to wit, April 16, 1913; an answer was filed by the defendants setting up a full answer to the facts averred in the bill of complaint; a long hearing was had before the Master, the Master filed a written report and in this report it was found that this was strictly a true class suit presenting questions of common interest to all the members of Class A and affecting their joint interests in funds and in internal management of the society, written exceptions were filed thereto both by complainants and defendants, and a final decree was entered dismissing complainants' bill of complaint for want of equity, which said decree has never been appealed from, modified or vacated, but is still in full force and effect. No Indiana members of the society intervened or were made parties to the suit by any subsequent proceeding prior to the filing of said ancillary bill in said cause.

"In 1919 the defendants to the ancillary bill, all being residents of the State of Indiana, and all having been members of said Class A of said Supreme Tribe of Ben-Hur or being beneficiaries of persons who were members of said Class A at the time of the commencement, prosecution and final decree in said cause of Balme and others *v.* Supreme Tribe of Ben-Hur and others, commenced actions in the Circuit Court of Montgomery County, Indiana, and in the Circuit Court of Marion County, Indiana, in which they seek to relitigate questions determined in favor of the defendant, Supreme Tribe of Ben-Hur, in said suit brought by George Balme and others in the United States District Court for the District of Indiana.

"The ancillary bill of complaint filed herein seeks to enjoin the maintenance and prosecution of the actions commenced by said several defendants to the ancillary bill of complaint in the State Courts of Indiana, all of which actions were commenced subsequent to the final decree in said cause of Balme and others *v.* The Supreme Tribe of Ben-Hur, which final decree was entered and rendered on the 1st day of July, 1915.

"That a copy of said ancillary bill, together with the motion of the defendants thereto to dismiss the same, and the order of dismissal are contained in the judgment roll filed herein, to which reference is made for a more particular description thereof, and that there is attached to said ancillary bill contained in said judgment roll a full copy of all the pleadings and proceedings had in said cause of Balme et al. *v.* The Supreme Tribe of Ben-Hur et al.,

together with the report and findings of the Master and the judgment and decree of the court.

"I dismissed the ancillary bill of complaint on the ground only that members of Class A of the Supreme Tribe of Ben-Hur residing in the State of Indiana could not be bound by representation by complainants in the class suit of Balme et al. *v.* The Supreme Tribe of Ben-Hur et al., as the presence of such Indiana members of Class A as plaintiffs would have ousted the jurisdiction of the court in the main suit, such jurisdiction being based only on diversity of citizenship and not on any Federal question, and that therefore the decree in the main case was and is not *res adjudicata* as to Indiana members of Class A of the Supreme Tribe of Ben-Hur.

"The only question which arose on the dismissal of the ancillary bill of complaint was the question of jurisdiction, and such question of jurisdiction only, as above stated, is hereby certified to the Supreme Court of the United States for its decision thereon."

From this statement of the case it is apparent that two points are involved in determining the jurisdictional question before us: First. Was the original decree binding upon citizens of Indiana who were in the class for whom the suit was prosecuted, but not otherwise parties to the bill? Second. Was the present suit ancillary in character, and such as to justify an injunction in the Federal court to restrain the proceedings in the State Court?

Class suits have long been recognized in Federal jurisprudence. In the leading case of *Smith et al.* v. *Swormstedt et al.*, 16 How. 288, 303, of such suits this court said:

"Where the parties interested in the suit are numerous, their rights and liabilities are so subject to change and fluctuation by death or otherwise, that it would not be possible, without very great inconvenience, to make all of them parties, and would oftentimes prevent the prosecution of the suit to a hearing. For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body, and the decree binds all of them the same as if all were before the court. The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject-matter of the suit is common to all, there can be very little danger but that the interest of all will be properly protected and maintained."

The subject is provided for by Rule 38 of the Equity Rules of this court promulgated in 1912, which reads: "When the question is one of common or general interest to many persons con-

stituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole." As the rule formerly read it contained the following provision "but in such cases the decree shall be without prejudice to the rights and claims of the absent parties."

The District Court held that this change in the Rule could not affect the jurisdictional authority of the court, and added, that in its view Rule 39 was the applicable one. Rule 39 provides:

"In all cases where it shall appear to the court that persons, who might otherwise be deemed proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may, in its discretion, proceed in the cause without making such persons parties; and in such case the decree shall be without prejudice to the rights of the absent parties."

Under the latter rule the District Court held that the Indiana citizens were out of the jurisdiction of the Federal court in the original suit, and that their joinder would have ousted the jurisdiction of the court, although that fact would not prevent the court from proceeding in the case to a decree without prejudice to their rights. "In other words," said the Judge, "although the original bill was a class suit, the class did not include Indiana citizens."

That the persons in Class A of the society were so numerous that it would have been impossible to bring them all before the court, is apparent from a statement of the case. They numbered many thousands of persons, and resided in many different states of the Union. There was the requisite diversity of citizenship to justify the bringing of a class suit in the United States District Court for the District of Indiana. The court, therefore, properly acquired jurisdiction of the suit, and was authorized to proceed to a final decree.

The District Court held that in its view joinder of Indiana citizens would have defeated jurisdiction in the Federal court, which conclusion was necessarily decisive of the case.

In *Stewart* v. *Dunham*, 115 U. S. 61, a creditor's bill was filed in equity to set aside a conveyance of a stock of merchandise. The suit was removed from the state court to the Circuit Court of the United States on the ground of diversity of citizenship. After the

cause was removed co-claimants, citizens of the same State as were the defendants, were admitted into the suit. This, it was contended, prevented the court from proceeding to a decree, as it was without jurisdiction because the controversy became one not wholly between citizens of different States. Of this contention this court said (p. 64):

"This, of course, could have furnished no objection to the removal of the cause from the State court, because at the time these parties had not been admitted to the cause; and their introduction afterwards as co-complainants did not oust the jurisdiction of the court, already lawfully acquired, as between the original parties. The right of the court to proceed to decree between the appellants and the new parties did not depend upon difference of citizenship; because, the bill having been filed by the original complainants on behalf of themselves and all other creditors choosing to come in and share the expenses of the litigation, the court, in exercising jurisdiction between the parties, could incidentally decree in favor of all other creditors coming in under the bill. Such a proceeding would be ancillary to the jurisdiction acquired between the original parties, and it would be merely a matter of form whether the new parties should come in as co-complainants, or before a master, under a decree ordering a reference to prove the claims of all persons entitled to the benefit of the decree. If the latter course had been adopted, no question of jurisdiction could have arisen. The adoption of the alternative is, in substance, the same thing."

This principle controls this case. The original suit was a class suit brought by a large number of the class as representatives of all its membership.

The change in Rule 38 by the omission of the qualifying clause is significant. It is true that jurisdiction, not warranted by the Constitution and laws of the United States, cannot be conferred by a rule of court, but class suits were known before the adoption of our judicial system, and were in use in English chancery. Street's Federal Equity Practice, vol. 1, § 549.

The District Courts of the United States are courts of equity jurisdiction, with equity powers as broad as those of state courts. That a class suit of this nature might have been maintained in a state court, and would have been binding on all of the class, we can have no doubt. *Hartford Insurance Co.* v. *Ibbs*, 237 U. S. 662, 672; *Royal Arcanum* v. *Green*, 237 U. S. 531.

Owing to the number of interested parties and the impossibility of bringing them all before the court, the original suit was pe-

culiarly one which could only be prosecuted by a part of those interested suing for all in a representative suit. Diversity of citizenship gave the District Court jurisdiction. Indiana citizens were of the class represented, their rights were duly represented by those before the court. The intervention of the Indiana citizens in the suit would not have defeated the jurisdiction already acquired. *Stewart* v. *Dunham, supra.* Being thus represented, we think it must necessarily follow that their rights were concluded by the original decree.

Rule 38, as amended, was intended to apply to just such cases. Rule 39 does not apply to a subject already specifically covered in Rule 38. Of course, mere considerations of inconvenience cannot confer jurisdiction, but it is to be noted that if the Indiana citizens are not concluded by the decree, and all others in the class are, this unfortunate situation may result in the determination of the rights of most of the class by a decree rendered upon a theory which may be repudiated in another forum as to a part of the same class.

If the Federal courts are to have the jurisdiction in class suits to which they are obviously entitled, the decree when rendered must bind all of the class properly represented. The parties and the subjectmatter are within the court's jurisdiction. It is impossible to name all of the class as parties, where, as here, its membership is too numerous to bring into court. The subjectmatter included the control and disposition of the funds of a beneficial organization and was properly cognizable in a court of equity. The parties bringing the suit truly represented the interested class. If the decree is to be effective and conflicting judgments are to be avoided all of the class must be concluded by the decree.

As to the other question herein involved, holding, as we do, that the membership of Class A were concluded by the decree of the District Court, an ancillary bill may be prosecuted from the same court to protect the rights secured to all in the class by the decree rendered. *Looney* v. *East Texas R. R. Co.*, 247 U. S. 214, and cases cited.

It follows that the decree of the District Court, dismissing the ancillary bill for want of jurisdiction, must be

Reversed.